S. HRG. 103–829

PERSIAN GULF WAR VETERANS' COMPENSATION AND OTHER PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

SEPTEMBER 14, 1994

Printed for the use of the Committee on Veterans' Affairs

U.S. GOVERNMENT PRINTING OFFICE

83–528 CC WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046268-1

S. Hrg. 103–829

PERSIAN GULF WAR VETERANS' COMPENSATION AND OTHER PENDING LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

SEPTEMBER 14, 1994

Printed for the use of the Committee on Veterans' Affairs

U.S. GOVERNMENT PRINTING OFFICE

83-528 CC WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046268-1

COMMITTEE ON VETERANS' AFFAIRS

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

DENNIS DeCONCINI, Arizona
GEORGE J. MITCHELL, Maine
BOB GRAHAM, Florida
DANIEL K. AKAKA, Hawaii
THOMAS A. DASCHLE, South Dakota
BEN NIGHTHORSE CAMPBELL, Colorado

FRANK H. MURKOWSKI, Alaska
STROM THURMOND, South Carolina
ALAN K. SIMPSON, Wyoming
ARLEN SPECTER, Pennsylvania
JAMES M. JEFFORDS, Vermont

JIM GOTTLIEB, *Chief Counsel / Staff Director*
JOHN H. MOSEMAN, *Minority Staff Director / Chief Counsel*

CONTENTS

SEPTEMBER 14, 1994

PERSIAN GULF WAR VETERANS' COMPENSATION AND OTHER PENDING LEGISLATION

WEDNESDAY, SEPTEMBER 14, 1994

U.S. SENATE
COMMITTEE ON VETERANS' AFFAIRS
Washington, DC.

The Committee met, pursuant to notice, at 2:10 p.m. in room SR–418, Russell Senate Office Building, Hon. John D. Rockefeller IV (Chairman of the Committee) presiding.

Present: Senators Rockefeller, Daschle, and Murkowski.

Also present (staff): Jim Gottlieb, chief counsel/staff director; Margaret M. Morrow, counsel; and John Moseman, minority staff director/chief counsel.

Chairman ROCKEFELLER. The Committee will come to order.

I note the presence of Senator Daschle. Senator Daschle, do you have any opening remarks you want to make?

Senator DASCHLE. Mr. Chairman, I do, and I appreciate very much your recognizing me this afternoon. I thank you for all the leadership you have shown on this now for such a long period of time. I am grateful to you, and I have enjoyed our partnership in trying to resolve many of these issues.

OPENING STATEMENT OF SENATOR DASCHLE

Thousands of American servicemen and women were healthy when they went to the Persian Gulf, and sick when they returned home. They are suffering illnesses that their doctors are unable to diagnose. Many have watched helplessly as their spouses and children develop unexplainable symptoms.

We do not yet know the cause or the causes of these illnesses. There are many plausible theories, but it may take years before the scientific community is able to give us the answers. These answers cannot come soon enough, however, for veterans or their families. What we do know is that these veterans, and now their loved ones, are clearly ill. They are ill because of their military service. The fact that we are still unable to pinpoint just what it is about their service that is making them sick must not prevent us from assisting these brave men and women in their time of need.

In June, I introduced legislation that will provide compensation to Gulf War veterans disabled to a degree of 10 percent or more by undiagnosed illnesses. The bill clearly states that compensation will

not be paid where VA can show that a veteran's illness is unrelated to his or her military service. What my bill does, then, is to give the benefit of the doubt to the veteran. The Chairman has also put forth legislation which addresses the issue of compensation for undiagnosed illness. I am proud to be a cosponsor of that bill, which will provide a much needed clarification on an aspect of title 38 currently in dispute.

I would like to outline briefly why I believe both the Rockefeller bill and my bill should be endorsed by this Committee.

Like the other members of the Senate Committee on Veterans' Affairs, I believe that VA already has the authority to compensate for undiagnosed illnesses so long as those illnesses become manifest to a degree of 10 percent or more within one year of the veteran leaving military service. The requirement of a diagnosis is a convention adopted by VA to make its compensation decisions easier. It is not a requirement of law. Unfortunately, to the detriment of many Gulf War veterans, VA has refused to acknowledge this existing authority.

Enactment of the Rockefeller bill will ensure that, in the future, VA is not able to use the convention of a diagnosis to evade its responsibility to veterans who are clearly ill as a result of their military service. The Rockefeller bill would also require VA to take into account the common military experiences or medical symptoms of veterans with similar service histories in making decisions regarding presumptive service connection. As the Vietnam Veterans of America point out in their written testimony to the Committee, this requirement will allow VA to take action in the future when similar problems arise, rather than waiting for Congress to take over, as it had to with Agent Orange, and as it is now doing with Gulf War illnesses.

But enactment of the Rockefeller bill alone will not adequately meet the needs of our Gulf War veterans. It has been more than 3 years since the end of Operation Desert Shield/Desert Storm, and yet VA's Persian Gulf War Veterans' Health Registry continues to grow. A 1-year cutoff in eligibility for compensation would clearly leave out many ill veterans deserving assistance. My bill would extend compensation to veterans who become ill within 3 years of leaving military service. Given the fact that we do not know what is causing these illnesses, any cutoff date will necessarily be arbitrary. However, I believe that my bill strikes a fair balance between the need to assist all veterans whose illnesses are related to their Gulf War service, and the need to place some practical constraints on such assistance.

I also want to comment briefly on the bill I introduced to provide for a permanent extension of the VA flight training program. Many veterans wish to pursue careers in aviation, yet the prohibitive cost of such training sometimes prevents them from realizing their dream. Four years ago, I authored the current flight training program, which allows veterans to use their educational benefits toward the high cost of flight instruction. More than 2,500 veterans have already received assistance to pursue commercial pilot licenses and various instrument ratings. Without Senate action, however, this successful program will expire at the end of this month.

The House of Representatives has already unanimously endorsed a permanent extension of flight training, and I hope the Senate will follow suit. Veterans have earned their educational benefits through service to our Nation, and they have even made monetary contributions towards those benefits. It only seems right that these men and women are given a broad array of choices as to how these benefits can be used.

Again, Mr. Chairman, let me thank you for your cooperation and the tremendous effort you have shown in addressing all of these issues. I look forward to working with you in the coming months to resolve all outstanding problems and successfully conclude passage of this legislation.

[The prepared statement of Senator Daschle appears on page 39.]

Chairman ROCKEFELLER. Thank you, Senator Daschle. I am confident that we will, in fact, be able to meld our bills together to achieve one common purpose.

Secretary, forgive me. This opening statement business is taxing on the witness, but Senators love it. [Laughter.]

OPENING STATEMENT OF CHAIRMAN ROCKEFELLER

I think most people here today agree with me that the most important and pressing issue that we have to discuss at this hearing is the matter of compensating Persian Gulf War veterans. There has been a great deal of communication between this Committee and VA on this subject over the past several months. This hearing will give us the chance to discuss these issues and help us figure out how to get the job done.

At the outset, I state my firm belief that when a healthy individual enters the military in the service of our Nation, and especially when that servicemember goes to war to defend the Nation, and is sick when he or she returns, VA can and should compensate that veteran. When I use the term "sick," I mean the individual has symptoms that can be verified by objective tests that show that the individual is not well.

As I have noted before, I am astonished, and, frankly, disappointed that VA has taken the position that it cannot compensate these veterans. We should be compensating those whose present illnesses can be tied to the period of up to a year—that's the difference between Senator Daschle's bill and my bill, and that will be resolved—up to a year after their separation from service, and then focus on trying to determine whether and to what extent VA should be compensating those veterans whose symptoms manifested more than 1 year after service. Hundreds, perhaps even thousands, have been denied just compensation because VA has refused to act.

Mr. Secretary, in your testimony, on page 12, you have written: "Mr. Chairman, I realize that we may still have differences of opinion with respect to the approach that we use to address this issue. I would hope, however, that your Committee could find a way to join the administration and your colleagues in the House to support legislation which will allow us to move forward together as soon as possible to meet the compensation needs of our Persian Gulf veterans." I regret to inform you that I will not pursue that course,

but, rather, I will pursue the course that Senator Daschle and I agree upon. That is my judgment.

Having said that, however, I want to move on. I want to determine today whether S. 2330 will do the job. Forgetting even whether you like it or not, will S. 2330, if passed, do the job? In other words, will VA be able to rely on the clarification of the law that would be made by this measure to compensate veterans who are sick now, and whose sickness can be confirmed by objective tests or by observation? I want to fix the problem for Persian Gulf War veterans, and for all future veterans.

Let me clarify who I am talking about—veterans who have evidence that their current health problem began in service or within 1 year of separation from service, evidence that comes from military medical records, VA medical records, examination reports of private physicians, or—importantly—by statements by family or friends of the veteran.

So let's cut to the chase today, I would say to all of us. We don't need to repeat the discussions that we already have had. What we are here to determine is whether S. 2330 will accomplish the goal of compensating Persian Gulf veterans. And if not, what is it that we need to do to that bill to accomplish that goal?

Finally, Mr. Secretary, I want to indicate respectfully my disappointment in VA's delay in submitting its testimony to the Committee. The testimony is 102 pages long. This hearing was not announced at the last moment. In fact, this hearing was originally scheduled for last month; VA has known about it for many weeks. Yet, because of VA's delay in getting the testimony to OMB for review, we did not receive it until late yesterday. I hope this situation may be avoided in the future.

[The prepared statement of Chairman Rockefeller appears on page 37.]

Chairman ROCKEFELLER. I now welcome our very first panel, including the Secretary of Veterans Affairs, Jesse Brown. Secretary Brown, I am very glad you are here today to discuss these issues with us. I notice you have a number of staff accompanying you today, including the VA Under Secretary for Benefits, John Vogel; the Acting Under Secretary for Health, Dr. John Farrar; the General Counsel, Mary Lou Keener; and the Acting Director for Environmental Agents Service, Dr. Frances Murphy. I welcome each and every one of you.

Mr. Secretary, the floor is yours, sir.

STATEMENT OF HON. JESSE BROWN, SECRETARY OF VETERANS AFFAIRS, ACCOMPANIED BY R. JOHN VOGEL, UNDER SECRETARY FOR BENEFITS; JOHN FARRAR, M.D., ACTING UNDER SECRETARY FOR HEALTH; MARY LOU KEENER, GENERAL COUNSEL; AND FRANCES MURPHY, M.D., ACTING DIRECTOR FOR ENVIRONMENTAL AGENTS SERVICE

Mr. BROWN. Thank you very much, Mr. Chairman. Mr. Chairman and members of the Committee, thank you so very much for giving me this opportunity to present our views on several bills important

to veterans and VA. My prepared statement addresses all of the bills. We requested many of the bills, and I am very grateful that you are considering them. I am, however, going to limit my opening remarks to the legislation addressing compensation for Persian Gulf veterans.

Like you, we at VA have placed these veterans' needs at the top of our priority list. That is why we have been very proactive on this issue. Most recently, we established three environmental hazard research centers. We redefined our disability compensation rating criteria for chronic fatigue syndrome. And we will conduct a major survey to gain more information about veterans' symptoms.

Mr. Chairman, our soldiers were exposed to many potentially toxic substances in the Persian Gulf, and we do not have all of the answers that we need in order to respond to those problems. But we cannot allow that to stop us. Our solutions must fit their problems; their problems cannot be made to fit our solutions. This brings us to the pending legislation.

Mr. Chairman, you and I want to respond fully and compassionately to our Persian Gulf veterans. As you are aware, my position is that VA does not have the authority to grant service connection for their undiagnosed illnesses. VA is restricted by statutory requirement. We can only provide compensation for disabilities resulting from disease or personal injuries incurred in or aggravated during active military service. Therefore, in the absence of any controlling legal presumption, we pay compensation only if three specific findings are made: (1) the veteran is suffering from a disability; (2) the disability results from a personal injury or disease; and (3) that disease or injury was incurred in or aggravated during active service.

As of today, we do not know enough to conclude that these symptoms or illnesses constitute either a disease or an injury. We also do not have medical or scientific data that link those symptoms or illnesses to exposures to toxic substances or environmental hazards in the Gulf, and we cannot otherwise show that they were incurred in or aggravated during service. Because these requirements of the law are not met, I do not have an administrative course open to me to do more than we are doing.

I know that there are members of this Committee who disagree with me on this. I know that there are some members who believe that VA should do more, that Jesse Brown should do more. I have spent my entire career as an advocate for veterans, and as Secretary for Veterans Affairs, that has not changed. If I thought the law permitted me to do more, I would. But I have a moral obligation and a legal obligation to comply with the law of the land.

Having said that, Mr. Chairman, we need legislation to help our Persian Gulf veterans. This is an extraordinary situation, and it requires an extraordinary response. However, I must tell you we have grave concerns about S. 2330. This bill attempts to create a new definition of disease, new to VA and new to medicine. We believe that it is too broad in terms of its potential effects on our disability compensation program. In fact, in our view, it will undermine the integrity of the program.

If the definition of disease in S. 2330 is adopted, all veterans who file claims for disability based only on complaints or symptoms will

be potentially eligible for benefits. It would not matter whether that veteran had service in the Persian Gulf. This would be so even if that symptom cannot be verified by any objective standard, or if it is not related to a disease under our current definition. The proposed legislation would apply to all 27 million veterans. Based on this new definition of disease, some veterans would receive compensation on a permanent basis.

Mr. Chairman, we believe very strongly that this bill, as I have already said, would undermine the integrity of our system of compensation. This is a good system. It is the most liberal system in the entire world. However, unless a disability results from a service-incurred or service-aggravated disease or injury, is there a valid basis for considering it service connected? We think not. Lowering the standards for service connection would be devastating to the compensation program because it would erode the support of the American people. This is one of the reasons we oppose this bill.

We also oppose this bill because in certain respects, it is too narrow to help many of the Persian Gulf veterans we want to help. I say this because this bill leaves these veterans with the burden of proving that their symptoms were incurred in or aggravated during military service. In many instances, Persian Gulf veterans with undiagnosed illnesses do not have anything in their military records that would support their claim. Also, there is a lack of scientific data and information linking their health problems to their service. As a result, these veterans would not be able to establish service connection under S. 2330. We believe they need and should have the benefit of a statutory presumption.

I know that to deal with that concern, Mr. Chairman, S. 2330 would make it possible for me to create a 1-year presumptive period for some chronic symptoms by adding them to the chronic disease presumptive list. However, there are three problems with that approach for creating a presumption for Persian Gulf veterans. One, enactment of S. 2330 would not supply us with the scientific evidence needed to connect undiagnosed illnesses that become symptomatic after service with veterans' experiences in the Persian Gulf. We cannot create rules that have no basis in fact. Furthermore, the statute authorizes presumptions for chronic diseases which must apply to all veterans. Any additional illnesses, complaints, or symptoms added to the presumptive list would apply to non-Persian Gulf veterans as well, and there would be no justification for that. Moreover, we believe a 1-year presumptive period is too short for those who left active military duty shortly after returning from the Gulf. Many veterans waited until they were sick before they called a doctor. Others did not see a doctor because they thought they would get better quickly. Some waited because they had no health insurance. VA's own Persian Gulf registry was not fully operational until August 1992, and, therefore, most of those who first reported their symptoms in a registry examination would not benefit from a 1-year presumptive period.

On the other hand, the legislative approach we support will help Persian Gulf veterans who are suffering. We need legislation that will provide compensation for a 3-year period for chronic diseases

resulting from undiagnosed illnesses. These illnesses should be at least 10 percent disabling within 2 years after they leave the Gulf. It is clear that more research is needed. In the meantime, we must relieve the veterans of the burden of proving service connection by establishing a 2-year presumptive period. Legislation of this kind will respond fairly and compassionately to the special needs of Persian Gulf veterans. Mr. Chairman, I ask that this Committee help in moving appropriate legislation forward to enactment this year.

This concludes my oral testimony, and I will be happy to respond to any questions that you or members of the Committee may have.

[The prepared statement of Mr. Brown appears on page 43.]

Chairman ROCKEFELLER. Thank you, Mr. Secretary.

Senator Daschle, I have a long list of questions which are sort of sequentially integrated. I would defer to you.

Senator DASCHLE. Thank you, Mr. Chairman. I will try to be brief, because I know this is a comprehensive hearing and there are a lot of witnesses to be heard.

Chairman ROCKEFELLER. No, don't be.

Senator DASCHLE. Mr. Secretary, your testimony just now indicates that VA and the Department of Defense [DOD] have already developed a uniform case assessment protocol for Gulf War veterans suffering from unknown illnesses. Can you give us the specifics of the protocol today?

Mr. BROWN. I think Dr. Murphy may be able to answer that.

Dr. MURPHY. The uniform case assessment protocol grew out of the work that was done at the VA referral centers in Washington, DC, Houston, TX, and West Los Angeles, CA. We've worked with DOD over the past several months to develop this case assessment protocol, which involves a group of screening diagnostic laboratory tests, stool tests, and x-rays, and a group of screening consultations. In addition, there is a group of symptom-specific diagnostic tests, often invasive tests, that are done based on the patient's individual complaints.

These are recommended for individuals who have already undergone an evaluation and have been diagnosed or identified as having an undiagnosed or unexplained illness after their Persian Gulf service. We can certainly provide you a copy of that uniform case assessment protocol. Dr. Farrar sent it out to all of our VA medical treatment facilities in June 1994.

Senator DASCHLE. Has it been implemented?

Dr. MURPHY. The local medical centers have begun to use that protocol, and it has been in use for more than 18 months at our regional referral centers.

Senator DASCHLE. How would you describe how well it has worked?

Dr. MURPHY. It is a very complex diagnostic workup because of the complexity of the complaints of these veterans. We have found at the referral centers that, in fact, when this protocol is used, the majority of patients are able to receive a conventional medical diagnosis that at least explains a portion of their symptomatology. I think it is a very useful protocol. It is similar to the protocol that is used for chronic fatigue syndrome in that, as a basis, it tries to rule out other conditions that are known medical diagnoses. And using this protocol,

we have, in fact, been able to identify many known conventional diseases.

Senator DASCHLE. I get a little concerned because we go through so many similar situations, and I worry that protocol could be used very clearly as an exclusionary device again. The Secretary had mentioned the three criteria that are used to determine eligibility for compensation, and one of them was that the—and correct me, Mr. Secretary, if I didn't understand it correctly—that the veteran have acquired the illness during time in service. Well, that's really what this whole endeavor is about—to recognize that oftentimes we aren't able to make that determination. I guess that is what led me to the questions relating to protocol, because that is really what protocol ought to do, to give us some guidance as to how we deal with those issues and those cases that clearly cannot be so delineated.

I am not sure I've heard anything in your answer yet that gives me the confidence that we protect veterans in cases such as this. Can you clarify just how VA handles cases like this? Obviously, a science-based approach is praiseworthy, but we have to go beyond science until we have the science in order to do the best job we can of compensating veterans and caring for them. How does the protocol address that?

Mr. BROWN. I don't think the protocol addresses that. The protocol is a device that allows us to obtain additional information about this problem that we're having. That is separate from the adjudication of the problem. And that is why we are here today, to try to figure out how we're going to respond. Like you, I don't think we should wait 20 years before we make a decision, like we just did last year on multiple myeloma and respiratory cancer secondary to exposure to Agent Orange. We shouldn't have to wait. I think in that respect, we are being very proactive here.

What we are simply saying is that we want the same thing this Committee wants, but we believe that we have to look at how the legislation will affect our current system. First, can it fit in? We looked at that very carefully and obtained information from our general counsel and many other people, to include the fact that I consider myself an expert in this, I've been doing this for 20-some years. The bottom line is that we provide compensation for disabilities that were incurred in or aggravated by service.

Now, that is kind of misleading, but it comes right out of title 38. It is misleading in this respect because, based on the concerns that you express, the law provides us many ways to grant service connection. In fact, there are about eight ways that we grant service connection. We can do it on a direct basis. We can do it on a presumptive basis, and we have some presumptions that are as long as 7 years after a person gets out of the service. We can do it on a secondary basis. Let us say, for instance, a person has an amputation above the knee that is service connected and then they subsequently develop a heart disease. We can service connect that heart disease secondary to the amputation. We can do it on vocational rehabilitation. We can do it under the old section 351, that is, if a person has an accident while in a hospital or they are injured as a result of malpractice while they are in our care. There are bilateral conditions.

Say, for instance, you have one kidney that is service connected, which, I think, we pay 30 percent for. If something happens to the other kidney, then the Government assumes the responsibility for both kidneys. The same thing with the eyes.

So there are many ways that we try to service connect. We recognize everything does not fit neatly in terms of being able to look at a person's service records and say, "Aha. He complained of this problem while in service." We know that many problems develop subsequent to service, and that is what this presumptive period is all about. That is what your legislation addresses, and we support that. While you call for a 3-year period, we think 2 years is fine.

Senator DASCHLE. But the 3 years won't work, Mr. Secretary, if in that 3-year period we have a protocol that is so-called science based that precludes you from providing the benefit of the doubt to the veteran. As I understand it, we have 2,000 cases claiming environmental disease that have been denied—2,000 cases so far. That makes me think that we don't have a very good protocol if, on the basis of protocol, we're making the decision that there is clear evidence sufficient enough for you to turn away 2,000 veterans. Now, if I am missing something, I want to know about it.

I would be interested, first of all, in your response to that fact, as I understand it. Second, I would be interested in knowing what would happen once we pass this legislation. Can we reopen those cases? If it is protocol that keeps us from doing so, then I would think your answer would be no. If the legislation will preclude consideration based upon protocol and give them the benefit of the doubt, then it would seem the answer is yes. But what is the answer?

Dr. MURPHY. It is really not due to the protocol.

Senator DASCHLE. Well, you say that, but tell me why.

Dr. MURPHY. The protocol is a medical diagnostic tool.

Senator DASCHLE. I know it is. But you are saying that a protocol—my apologies for interrupting. But why is it that on the basis of medical or scientific evidence, you can say we're going to deny a claim, which you do, correct?

Dr. MURPHY. The problem right now is that the state of scientific knowledge does not allow us at this point to definitively determine that an exposure that occurred in the Gulf was related to the symptoms that these veterans are reporting. Many times they are just symptoms or undiagnosed illnesses without objective findings.

I will turn to my colleagues in VBA to explain.

Mr. BROWN. Let me take another stab at that.

Senator DASCHLE. But you didn't answer the question. The 2,000 cases that have been turned away, was that not on the basis of protocol?

Mr. BROWN. No, it wasn't, Senator.

Senator DASCHLE. It was not?

Mr. BROWN. No. And that's the point we're trying to make. There is a distinct wall between the purpose of these protocol examinations and what we use for adjudication purposes. Now, we may use information from a protocol as part of the entire evidentiary record in evaluating whether or not service connection is going to be denied.

But service connection is never denied on the basis of just a protocol examination in and of itself. That's not the way we do business.

We look at, one, if a disability exists. That is the first thing we look for. The second thing we look for is whether that disability is a disease or injury. And the third thing, as I mentioned, is whether or not that disease or injury occurred during active military service.

Senator DASCHLE. Why should that matter?

Mr. BROWN. I'm sorry?

Senator DASCHLE. I mean, if there is no way to determine that, why should that third criteria be a factor in providing the basis for compensation of veterans? There is no way you can tell in some cases, and that's what I am saying. And that's what you said, Mr. Secretary, was part of the protocol, right?

Mr. BROWN. No, sir. You keep bringing protocol into this picture when it is not really part of the adjudication. I am going to ask John Vogel if maybe he can explain it a little bit better than I.

Mr. VOGEL. Mr. Daschle, the protocol merely seeks to find a definitive answer. The bill that we support provides a 3-year period for payment of compensation. We hope that during that period a protocol will help us establish the causative basis in the case definition. In the meantime, we believe that the undiagnosed illnesses that manifest themselves can be compensated for if they are manifested within a couple of years of leaving the Gulf. VA is in a position to ask for an extension of the 3-year period if the protocol does not establish a causative basis.

In the environmental cases that have been allowed for Persian Gulf veterans, the most commonly found ailments are those that are demonstrable—upper and lower respiratory ailments and skin ailments. A large number of other conditions are mental and neurological disorders for which we often have an objective diagnosis. About 17 percent of the veterans who filed environmental claims are receiving benefits. Of all the veterans who served in the Persian Gulf—

Senator DASCHLE. Are you saying that 83 percent of those who made claims on an environmental basis are rejected?

Mr. VOGEL. Many times, Mr. Daschle, because we find no disability on examination. No disability is found at all.

Of all the veterans who served in the Persian Gulf, 43,000 have made claims for disability compensation. Of those, 36 percent are receiving disability compensation for the things that you and I would call the traditional conditions—gunshot wounds, muscular/skeletal injury, and residuals of accidents, such as aircraft and jeep accidents. Some 13,500 veterans are, in fact, receiving compensation based on service in the Persian Gulf.

Senator DASCHLE. Mr. Chairman, I don't want to belabor this point. My concern is that the Secretary's third criteria requires that we have to be able to demonstrate that the illness was acquired as a result of service. I am saying that if it is part of the purpose of protocol to confirm that or somehow make that determination, then I think protocol is ill serving the veteran.

For whatever reason, we've turned away 2,000 veterans who have made environmental claims. I am still unclear as to what criteria was

used to turn them away. I guess what you said was that for many veterans, it was lack of ability to demonstrate they even have a disease or a disability. But I assume that isn't all of the cases. I would be very interested in taking a close look at this protocol. I think it ought to be made part of the record, and I would like to pursue this perhaps in a forum outside the hearing.

[A copy of the protocol appears on page 132.]

Clearly, the veterans are of a mind that in many cases it is this procedure, whatever we call it, whether it is the protocol or the post-protocol decisionmaking period, that is too restrictive, and, therefore, extraordinarily ineffective in serving their needs. I hope this legislation addresses that. You didn't answer the question as to whether or not these 2,000 cases would be opened up again. I would hope they would be because I think in many cases, as a result of giving them greater latitude, they would be considered for eligibility at a later date.

Mr. BROWN. Let me just take another stab at this. First of all, the protocol process is basically separate and apart. It does not weigh very heavily in our decisionmaking process, adjudication process, it is just part of it. We're just looking for more information there. Secondly, whatever legislation comes out of this whole process, veterans can reopen their claims.

Let me give you an example of what this really is all about. Let us take, for instance, a veteran who left the Persian Gulf, and within 2 years after leaving the Gulf, he complains of headaches. Just headaches. There are no other objective findings whatsoever. They do not fit the nomenclature that you would apply to migraine headaches. He just complains of headaches. Under our present criteria, we would not service connect that veteran simply because it cannot be classified as a disease. It has nothing to do with diagnosis. It cannot be classified as a disease or injury.

Under your legislation, for instance, what we would then be able to do is we would be able to grant service connection for that even though there was nothing in the military and the headaches first appeared within, say, 2 or 3 years after military service. So that is really what this is all about. We're trying to create a vehicle by which we can pay compensation for veterans that are suffering from the symptoms and illnesses and complaints.

Senator DASCHLE. Thank you.

Mr. VOGEL. Senator Daschle, if I might add something. All the veterans whose claims have been made based on environmental conditions are maintained in a database. On the basis of what we expect to see come out of the Congress, namely, legislation that allows us to respond to their needs, we will review every one of those cases.

Senator DASCHLE. Let me just take one last shot at an example. Let's assume there is a neurological problem. A veteran came in, say, 30 months after being released from the military, and he has a neurological problem. I don't know what the protocol says with regard to neurological disorders, but let's assume that somehow the protocol addressed neurological issues and concluded that there is no connection between neurological problems and any exposure to

whatever environmental hazards may have existed in the Persian Gulf. What you are telling me is that just because the protocol has made that determination, it doesn't preclude you from providing compensation and all the care a veteran may require?

Mr. BROWN. That's exactly what I am saying, if the veteran is suffering from a disease or injury. Let us say he is suffering from a neurological disease, sticking with your example; he could have absolutely no complaints at all while in the military and it is possible, depending on if it is a debilitating type of disorder, it is possible that we could service connect that on a presumptive basis within the first year of his discharge.

The whole VA compensation system is really a beautiful program in that we do not have to show a cause-and-effect relationship. All we have to do is show that something happened to a veteran while in the military. We do that one of two ways. One, if he or she has complaints while in the military. In the absence of complaints, we go to the presumptive period. Our presumptive period, 90 percent of them are within 1 year. If that condition manifested itself, a disease manifested itself to a 10-percent disability within the first year, we can grant him service connection. We can pay him—in this case, let's make it multiple sclerosis—we can pay him up to $5,000 a month. We can give him a house, we can give him a car, all of the medical benefits he needs, everything. So that's the program we have now.

What we want to do is the same thing you want to do. We want to take that system and apply it to veterans suffering from complaints and symptoms. What I am simply saying is we don't have the legislative authority to grant service connection for complaints and symptoms at this time. We can only do it for diseases or injuries.

Dr. MURPHY. Let me expand just slightly on what Secretary Brown has said. The protocol is a diagnostic tool.

Senator DASCHLE. I understand.

Dr. MURPHY. It is a medical care program. It is designed to be comprehensive and thorough in the evaluation of Persian Gulf veterans with unexplained illnesses. It tries to give us that diagnosis that we can then base compensation on. In the absence of that, at the end of the protocol, if we've done as much as we can with our existing diagnostic tools, if the veteran comes out at the end of that investigation and that evaluation with no diagnosis, then your bill would allow us in that situation to say this is an undiagnosed or unexplained illness, and then the veterans benefits folks would be allowed to do their part and compensate the veteran despite that, if they had at least 10-percent disability within the presumptive period.

Senator DASCHLE. My concern was just that the protocol not be viewed as so all inclusive that if for some reason something that wasn't in any way mentioned in the protocol was found to be a problem for a veteran, that would not ever be used as a reason not to continue to give that veteran consideration. And your answer is unequivocally, no.

Mr. BROWN. That's exactly right. What we would normally do in any event, what we look for by law, by law or regulation, we have to verify whether a disability exists. We are changing the regulations a little bit to allow us to accept statements from private physicians to

make our determination. In the past, we had to verify the presence of a disability by our own physicians. So that's the whole point here. I think this protocol is a good thing. It is not enough. That is one of the reasons we are moving forward with new research. We just opened three research centers and we will get them moving to help us get more information. In the meantime, I want to do the same thing you want to do, compensate them until we find out what the problems are.

Senator DASCHLE. Thank you all. Thank you for your patience, Mr. Chairman.

Chairman ROCKEFELLER. No, not at all, Senator Daschle. You were right on.

Mr. Secretary, I will start with just kind of a crazy question. If you think you don't have the authority—and a lot of the rest of us think that you do—did it ever occur to you just to go ahead and start compensating veterans and let somebody try to sue you, but at least you would be doing it? Because if we hadn't gotten the legislation passed that veterans would get health care, I don't know what they would be getting. They would just be getting from you a statement saying we can't help, we don't have the authority. Did it ever occur to you just to do that?

Mr. BROWN. Before I respond to that, give me your analogy with health care. I missed that.

Chairman ROCKEFELLER. Well, we got legislation passed saying Persian Gulf War veterans are going to get health care. So they are getting health care. But short of that, they would be basically getting a statement from you saying, "We don't have the authority to help."

Mr. BROWN. I want someone to correct me if I am wrong, but I think, in fact, that our authority to provide cost-free health care was unclear. We went ahead and provided care and deferred collection of copayments. Congress authorized us to provide care without charging a copayment and made that authority retroactive.

Chairman ROCKEFELLER. Well, then, what was wrong about trying to do that for these men and women?

Mr. BROWN. Because, quite frankly, Senator, I do not believe that we have the authority to move forward.

Chairman ROCKEFELLER. I understand that.

Mr. BROWN. I want to do what reflects the law of the land.

Chairman ROCKEFELLER. But not evidently in what you just told me.

Mr. BROWN. Yes. But what I am saying is that in my view here, this is very, very clear. The language here is very, very clear. In the case of the problem involving health care for our veterans, we had some latitude within our discretion. I think that we still were within the intent and the spirit of the law. In this case, the law in my view is very, very clear. It says three things. It says that if you are going to pay compensation, you have to have a disability, and it better be for a disease or injury that was incurred in or aggravated by service. I got that from my general counsel. I have worked for an organization that, in my view, prides itself in having technical expertise, and I have—

Chairman ROCKEFELLER. Mr. Secretary, the DAV does not support your view.

Mr. BROWN. What I am telling you is that when I look at—and DAV can speak for itself—when I look at my responsibility in terms of what we can do and what we cannot do, I believe that we made the right decision. At the same time, that is why I am here today asking for relief, so that we can move forward and compensate these veterans.

Chairman ROCKEFELLER. You have spoken in your testimony of a shared goal. I want to believe that is true. Let me state at least a part of my goal, and I want to see if you agree with it. I believe that a veteran who enters the service healthy, especially one who goes into service during a period of conflict, and returns with a health problem, should get all benefits available, including compensation. Do you agree?

Mr. BROWN. Yes, sir.

Chairman ROCKEFELLER. I indicated in my opening statement the main focus of this discussion is to figure out whether S. 2330 will accomplish the goal of compensating Persian Gulf veterans who are disabled because of illnesses that cannot be diagnosed. Let's put aside for a moment the discussion in the past few months between VA and this Committee and our clearly very strongly differing opinions on whether or not you have the authority under current law. You have your lawyers, we have our lawyers. And let's put aside also whether S. 2330 is overbroad or too narrow, whether it would undermine the VA compensation system, and how much the bill would cost, and let's put all other things aside. Disregarding all of that, as a fundamental issue, do you agree that the provisions in S. 2330 would give you the necessary authority to compensate for disabilities resulting from undiagnosed illnesses?

Mr. BROWN. Ask the question again, Senator.

Chairman ROCKEFELLER. Do you agree that the provisions of S. 2330 would give you the necessary authority to compensate for disabilities resulting from undiagnosed illnesses?

Mr. BROWN. Yes and no. The reason why I say yes, if we make the term "illness" equal with the term "disease," then we would have to apply the rules that govern the disease process. Now, if that is the case, we would be able to compensate those veterans with undiagnosed illnesses or complaints if the symptoms occurred while they were in the military or, if we add it to the presumptive list, within the first year after they are discharged. But that leaves out a lot of veterans who did not have complaints while they were in the military and it also leaves out those veterans who had complaints after the 1 year expired.

Chairman ROCKEFELLER. I understand that. Mr. Secretary, please remember, I indicated we were leaving a lot of things aside. I just want to know whether you think this would give you the authority to do what I think you ought to be able to do.

Mr. BROWN. And my answer is, yes and no.

Chairman ROCKEFELLER. Well, that's an extraordinary answer, yes and no. As for the "no" part, then what is needed in S. 2330? What changes do we have to make?

Mr. BROWN. I would like to see a bill that will allow me to grant service connection for illnesses, complaints, and symptoms. I would like to see a bill that will allow me to do that within 2 years after they leave the Gulf. And I would like to see a bill that has a life of about 3 years.

Chairman ROCKEFELLER. See, part of the underlying philosophy of what I am trying to get at, and what I think you should be trying to get at, is to try to get the Congress out of the business of micro-managing every disease or every illness that comes out of a military conflict or some other situation. This should basically not be what we're trying to do. And your answer to me seemed to limit the changes only to Gulf War veterans. Is that what you would choose to do, just limit it to Gulf War veterans and not take it elsewhere?

Mr. BROWN. Absolutely. I believe, as I mentioned in my opening statement, that we have a system where we grant service connection for act-of-God disabilities. By that, I am talking about diabetes, heart disease, kidney disorders, arthritis, and so forth. If we create a system where we open those benefits up to veterans across-the-board suffering from headaches, joint pain, nervousness—however that is defined, and I'm talking in the absence of a diagnosis such as neurosis or psychosis, that type thing—if we do that, I am afraid, Senator, that it is going to undermine the entire compensation system. I think it is a great system, and I don't want to do anything that is going to cause people to look at it and say, why are we paying compensation for life because a veteran complains within 2 years or 1 year that he had a headache, or—

Chairman ROCKEFELLER. Then if you had, as I think you ought to have, the discretion to accommodate your concerns on some of these cases, would that not be satisfactory to you?

Mr. BROWN. The problem with this is that we are using as a framework the criteria that have been around in title 38 for many, many years. You cannot take those criteria and say, well, they are going to apply. Let's take, for instance, the presumptive period. If you say you will now grant service connection for nervousness—it doesn't have to be a psychosis, it doesn't have to be a neurosis, it doesn't have to be anything other than a person comes to you and says, "I'm nervous"—that basically means that we can grant service connection while he is in the military. If he doesn't have it in the military, we can put it on the presumptive list and we can grant it for him if he complains of it in the first year. I guess I am simply saying that under that kind of a scenario, it will end up being devastating to the compensation program. I just don't think this is going to be good for veterans in the long run. We need to limit it.

Chairman ROCKEFELLER. I will come further to that. Underlying your testimony, Mr. Secretary, seems to be a concern about the legality obviously of compensating Persian Gulf War veterans and the need for specific authority to do so. I must note my surprise at that stance. It seems inconsistent with actions taken by two of your most recent predecessors, both Secretary Derwinski and Acting Secretary Principi. I wonder who you believe would raise legal objection if you took aggressive action to ensure that every Persian Gulf War veteran who entered service healthy and came home sick was compensated?

Mr. BROWN. Senator, I don't care about people filing suit. That doesn't faze me. What I want to do is what is right here.

Chairman ROCKEFELLER. Isn't the fact of the matter that you would never be challenged on that at all?

Mr. BROWN. It doesn't matter.

Chairman ROCKEFELLER. Why not? It matters to some veterans.

Mr. BROWN. What I am suggesting to you is if I thought it was right, I would go ahead and do it. But I think the position that we are taking today is the right course of action to take. I simply do not believe, and no one has said anything that convinced me, that we have the authority to grant service connection for complaints and symptoms. No one has given me any type of persuasive argument that came anywhere near suggesting that that's a reasonable position for me to take.

Chairman ROCKEFELLER. So Derwinski and Principi were off the reservation?

Mr. BROWN. Well, let's talk about Derwinski and Principi. The fact of the matter is, since you mentioned those two individuals, they had an opportunity to address this problem in a hearing in 1991 and they did nothing. These are the same people who tried to change the definition of service connection to create a cause-and-effect relationship, which basically meant if my son went to Germany and was in a car accident and came back home a quadriplegic, VA wouldn't accept any responsibility. These are the same individuals that we caught involved in a secret task force to revolutionize in a negative way the entire rating schedule, taking compensation away from veterans that are already on the rolls. These are also the same individuals that accused me in the Washington Post newspaper of going out of my way to grant service connection for multiple myeloma and respiratory cancer as secondary to Agent Orange. So these are political statements coming from these individuals. They are out of the loop, and it doesn't present me with anything that would change my mind. I can only go by history and their history doesn't suggest, quite frankly, they were willing to go out on a limb for veterans.

Chairman ROCKEFELLER. Well, whatever you may think of them politically or otherwise, they did, in fact, do what you are not willing to do.

In an effort to address VA's concerns, and in clarifying the definition of the term "disease," the bill would not require a "characteristic set of symptoms." However, if the lack of a characteristic set of symptoms really is a problem in compensating Persian Gulf veterans under S. 2330, why isn't it also a problem under H.R. 4386, where VA would pay compensation to veterans "suffering from a chronic disability resulting from an undiagnosed illness"? Why won't that standard require VA to have some characteristic set of symptoms?

Mr. BROWN. Are you talking about the House bill?

Chairman ROCKEFELLER. Yes, the House bill. You got it.

Mr. BROWN. I have no problem with the House bill.

Chairman ROCKEFELLER. I understand that. I am just trying to make a comparison.

Mr. BROWN. OK. Let me tell you why. The House bill went to great lengths to differentiate between undiagnosed illnesses and disease. They recognized the integrity of the system that has been time tested, that we have to have three elements in order to grant service connection. They recognized that. But at the same time, they said we need to do something for these veterans and need to move forward. So I think the House bill is consistent with our position, and it is also consistent with Senator Daschle's bill.

Chairman ROCKEFELLER. "Suffering from chronic disability resulting from an undiagnosed illness."

Mr. BROWN. Yes, sir. And that's it. Undiagnosed illnesses. That is the problem. There's a big difference between undiagnosed illnesses and undiagnosed diseases. That's the problem that we have here.

Chairman ROCKEFELLER. Yes. Yes. Would you not agree that no matter what bill is passed that VA still will have to come up with some regulations that articulate some standard for determining degree of disability resulting from undiagnosed illnesses?

Mr. BROWN. Probably. It depends on the nature of the bill, the language and what the instructions are and the intent and so forth.

Chairman ROCKEFELLER. And would you not also agree that the standard is not, nor is it likely to become, clear or straightforward?

Mr. BROWN. I would hope that it is. I would hope that the intent of Congress is clear, Senator Rockefeller. That's why we are here. We want to do the same thing you want to do, sir. We just want a mandate so that we can pay compensation for complaints and symptoms. That is all we want for our Persian Gulf veterans. We just want to pay compensation for complaints and symptoms for our Persian Gulf veterans.

Chairman ROCKEFELLER. And that is what I wish you would do.

Is there any reason why all Persian Gulf veterans should have a single characteristic set of symptoms? Isn't it possible at this point to list various collections of symptoms?

Mr. BROWN. I think it is more than probable. It is much stronger than possible.

Chairman ROCKEFELLER. You are saying, yes?

Mr. BROWN. Yes, sir.

Chairman ROCKEFELLER. Mr. Secretary, you have indicated that this bill would open up a floodgate to new claims. I have an extraordinarily difficult time accepting that and even understanding how you could give that as an argument. I have no reason to believe that the universe of claims for undiagnosed illnesses denied in the past is anything other than extremely small. If you have reason, I would like to hear it. In fact, I have never heard of this concern until it came up in connection with Persian Gulf War veterans. Nevertheless, if a veteran filed a claim for an undiagnosed illness and was denied sometime in the past and the veteran still suffers from the condition and can submit sufficient evidence showing that the condition arose in service or within one year after, don't you believe that veteran should be compensated?

Mr. BROWN. OK. You asked me two questions. The first question is that you mentioned that you had never heard of—

Chairman ROCKEFELLER. Can you give me some examples? Does your staff know of some?

Mr. BROWN. You never heard of anyone claiming that if we modified our system to compensate for complaints and symptoms that it would flood our gates. You never heard of it, I think, because I never heard of it either. No one has ever, in my history, suggested that we should pay compensation for complaints and symptoms. This is the first time I heard of it, also. The point that I want to make there—

Chairman ROCKEFELLER. So, where is the floodgate?

Mr. BROWN. I don't think I used the term floodgate. What I used is that when you open this system up, you have got 27 million veterans and if you are going to start paying compensation for a person complaining about pain in the wrist or a headache or nervousness, whatever that means, it creates the potential of an unmanageable situation for the compensation program. That's the only point that I wanted to make.

Another point I would like to mention. We did a survey, at least got information of a survey of 13,000 Americans from the general population, and 36 percent of them complained of joint pain; 31 percent, back pain; 25 percent, headaches; 23 percent, fatigue; 19 percent, difficulty sleeping; and 12 percent, diarrhea. Now, what we are basically saying here is that we are now going to pay compensation for these types of things that are very prevalent in the general population. I don't think that is right. At the same time, I believe that we should pay compensation for these kinds of things for our Persian Gulf veterans until we are able to determine what is wrong with them and then adjudicate them in accordance with our time-tested system.

Chairman ROCKEFELLER. I guess I would repeat the question, also, of whether or not there have been requests for reopening or whatever of claims that were based upon undiagnosed illnesses? You have never heard of a single claim, I have never heard of a single claim. I would just like to get it.

Mr. BROWN. Absolutely, because that is not something that we looked at. We only pay compensation for diseases and injuries that occurred—

Chairman ROCKEFELLER. So, in any event then, compensation in such a claim could be awarded under current law only from the date the new claim was filed and would not be retroactive to the date of the original claim? That much is clear, is it not?

Mr. BROWN. You are saying compensation will be granted from the date of claim?

Chairman ROCKEFELLER. Yes.

Mr. BROWN. As a general rule, if a veteran files a 526, which is an original application for compensation, within 1 year of the date of discharge, it goes retroactive back to the date following discharge. If he files a claim after that first year, then it is the date of claim. Is that right, John?

Mr. VOGEL. That's correct.

Chairman ROCKEFELLER. Finally on this part, even if there were to be an increase in the number of claims filed, such claims would be

very difficult, nearly impossible, to prove; wouldn't you agree with that?

Mr. BROWN. No, sir. The test that we are applying here, we are relaxing the burden of proof. Now, it depends on the bill that you are talking about. If we use S. 2330, if we use that, the way the language is written at this point in time, it means that we would apply the same test to those conditions that we apply to diseases or injuries. The same test. So that wouldn't change. Where the veteran would get hurt I think is that if the veteran did not have, let us say, any of these complaints—in this instance, let's say joint pain—if he didn't complain of joint pain while in the military, then he would be out of luck because the presumptive period, unless we somehow—yes, he would be out of luck. If we applied the rule, he would have to show while in the military that he had complaints. If he didn't have them in the military, he would have to show that they developed within the first year after service if we add it to the presumptive list.

Chairman ROCKEFELLER. Basically, you have answered the question by saying, yes; have you not?

Mr. BROWN. I don't know. I just want to stick with what I said. I don't know if I answered it yes. [Laughter.]

Mr. Secretary, in your testimony, you stated that "based on your many years of experience in addressing compensation-related issues," you cannot disagree with the VA general counsel that providing service connection for unexplained illnesses is prohibited because the statute allows VA only to pay compensation for disabilities resulting from personal injury or disease. In your years of experience, and there have been many of them, have you ever seen a situation similar to what you now face? In other words, has there ever been another instance of mysterious illness comprised of collections of symptoms shared by groups of veterans with similar service, as in the case of Persian Gulf War veterans?

Mr. BROWN. As in the case of Persian Gulf War veterans—

Chairman ROCKEFELLER. And I hope you don't bring up Agent Orange or radiation, because that would be—

Mr. BROWN. That's totally different.

Chairman ROCKEFELLER. It sure is.

Mr. BROWN. The Agent Orange, in that instance we had—

Chairman ROCKEFELLER. No, we both agree, that's not—

Mr. BROWN. That's much different.

Chairman ROCKEFELLER. Yes.

Mr. BROWN. I cannot think. Now, there are a number of conditions that we establish service connection based upon statistical information, which is another way of saying, yes. But the difference is that we use statistical information to connect the disease to the service. Let me give you an example. An example would be a veteran who has an amputation above the knee, one or both legs amputated above the knee, and that veteran subsequently developed heart disease. That heart disease was statistically shown to be higher in people who have amputations above the knee. Another one we just did, and I am very happy about this one, was in ischemic heart disease, where we found statistically there was a higher percentage of POW's who suffered from wet beriberi and now have ischemic heart disease. So we used

that information in order to service connect. And there are about four or five of them; I can't remember all of them, but those are two examples where we use statistical information.

The only difference is the difference between disease, and illnesses or complaints. So we were still working within the parameters of VA law because we were trying to figure out a way if this ischemic heart disease, which is a disease, is secondary to the wet beriberi that the veteran had 50 years ago while he was a POW.

Chairman ROCKEFELLER. I understand what you have been saying, but that does not respond to the question that I asked, which is, have you ever seen any other similar situation like this?

Mr. BROWN. I don't think so, sir. If you are asking me have I ever—

Chairman ROCKEFELLER. Given your experience, you could give no other answer but no.

Mr. BROWN. Yes, sir. If you are asking me have I ever observed—now I've seen many cases where veterans complained or filed a claim for service connection of, let's say, back condition or back pain, or they file for things like that. But I have never—

Chairman ROCKEFELLER. This is unique, is it not?

Mr. BROWN. Yes, sir. Absolutely. It is unique and it is something that requires an extraordinary measure to resolve.

Chairman ROCKEFELLER. And is it also not potentially the wave of a whole future series of situations, events, wars that are going to be of this nature? So this is not just a new event, but really a change and something that we have got to be able to face in the future?

Mr. BROWN. Yes, sir.

Chairman ROCKEFELLER. Mr. Secretary, in your testimony, you stated this liberalizing law would apply to all 27 million veterans, and would enable all veterans whose claims have previously been denied to file new claims for benefits on the basis of symptoms alone. How many of the 27 million veterans have ever filed a claim?

Mr. BROWN. We have about 2.3 million on the rolls now. Do we know how many?

Mr. VOGEL. I don't know at this time, but we can provide that.

[The following information was subsequently provided:

The most recent information available, which comes from the 1987 National Survey of Veterans, indicated that 4,180,000 living veterans had filed claims. A new survey is currently in progress, but the data are not yet available.]

Chairman ROCKEFELLER. I am just going to suggest that I think the statement is a bit of a hyperbole.

Mr. VOGEL. If the Persian Gulf experience is any basis, of the 700,000 who served in the Persian Gulf, 329,000 have been discharged, and 43,000 have made claims for disability compensation.

Mr. BROWN. Let me back up a little bit here to put that statement in its proper context. I don't think that it is out of line for this reason. I am simply saying that if you create a vehicle to grant service connection for back pain, any veteran that had back pain in service or any veteran that developed back pain within the first year after he or she gets out of service is potentially eligible for compensation.

That's all I am saying. The rules apply to them. You can't take these rules and set them aside, have generic rules and then say, OK, these don't apply to you over here. We are just going to set this aside for our Persian Gulf veterans.

The problem is that we want to fix for our Persian Gulf veterans. We don't want to end up creating a system that we're not going to be able to manage in the out years.

Chairman ROCKEFELLER. Again, I think basically there hasn't been a flood. Let me try and rephrase, if you would let me do so, your statement. Let me try to rephrase it and see if you agree with my interpretation. This liberalizing law would apply to all 27 million veterans, yes, and would enable all veterans whose claims have previously been denied where there was a temporal connection but no diagnosis of a disease to file new claims for benefits on the basis of symptoms alone.

Mr. BROWN. I don't know what you said. Can you say that again?

Chairman ROCKEFELLER. Yes, I will. I am trying to rephrase what I think you should have said, and obviously you can disagree with me if you want. This liberalizing law would allow any of the 27 million veterans whose claims have previously been denied, where there was a temporal connection but no diagnosis of a disease, to file new claims for benefits on the basis of symptoms alone.

Mr. BROWN. Yes, sir.

Chairman ROCKEFELLER. OK. And if that is the case then, how many veterans' claims do you think would be granted?

Mr. BROWN. I have no idea. We don't have any experience in anything like this. We have—

Chairman ROCKEFELLER. In other words, you just really have no idea.

Mr. BROWN. No, sir. But we can make some projections. I guess the only point that I was getting ready to make is that there are about 9,000 diseases that we know about. We have about 700 diagnostic codes in our rating schedule. Of that 700, there are in our computers about 5 or 6 million separate diagnostic codes for disability that are being paid, and all of them are being paid for a disease or injury. Now, the way you phrased the question, it creates totally new territory because we have never had anything like this before. Interim benefits are a little bit different. That isn't where we are actually changing a definition that is going to have an impact on our compensation system.

Chairman ROCKEFELLER. Let me proceed with this line of questioning. And Senator Daschle, interrupt me any time you want.

Mr. Secretary, part of your reasoning for supporting a presumptive period longer than a year is because many veterans did not present their health problems in connection with a registry examination until they had been out of the service for more than a year. I want to get a feeling from you for the universe of claims that we're dealing with here. The claims filed by Persian Gulf veterans for undiagnosed conditions really fall into two distinct categories—claims for conditions that showed up in service or within 1 year of separation, and claims for conditions that showed up after the 1-year period.

How many claims have been filed by Persian Gulf veterans for undiagnosed illnesses that manifested in service or within a year after discharge?

Mr. BROWN. We will try to get that information for you for the record.

[The following information was subsequently provided:

We do not maintain records on claims filed by Persian Gulf veterans involving undiagnosed illnesses. Recent information does show that among environmental hazard claims from Persian Gulf veterans, we have received 49 claims for "Persian Gulf Syndrome" and 15 claims for multiple chemical sensitivity, which are diagnoses which we do not accept for rating purposes. However, it would be incorrect to construe that these 64 cases represent the universe of Persian Gulf claims involving undiagnosed illnesses, or that each of these 64 cases necessarily involves illnesses for which a diagnosis, acceptable for rating purposes, could not be obtained. Accurate information could be obtained only by reviewing the over 5,000 Persian Gulf cases with compensation claims based on exposure to environmental hazards.]

Chairman ROCKEFELLER. And then also how many of those claims have been denied for lack of a diagnosed disease? You will get me that information?

Mr. BROWN. Yes, sir.

Mr. VOGEL. Yes, Mr. Chairman. We may have that.

Chairman ROCKEFELLER. We asked for that quite a long time ago.

[The following information was subsequently provided:

In any claim for compensation, a denial is in order for claimed disabilities that cannot be attributed to a known clinical diagnosis. We have no statistics reflecting the number of Persian Gulf compensation claims in which such a denial has been made. Accurate information could be obtained only by reviewing the over 5,000 Persian Gulf cases with compensation claims based on exposure to environmental hazards.]

Mr. VOGEL. Mr. Chairman, are we talking about whether veterans' claims are environmentally caused or the general range as far as—

Chairman ROCKEFELLER. You got it. And then thirdly, how many denials have been appealed to the BVA.

Mr. VOGEL. We'll attempt to provide that.

[The following information was subsequently provided:

We do not maintain these statistics for Persian Gulf compensation claims based on environmental hazards. We would have to review over 5,000 such cases in order to obtain an accurate count.]

Chairman ROCKEFELLER. All of these requests have been sent some time ago.

Mr. Secretary, you stated in your testimony that compensation should be granted for conditions that manifested within 2 years of the veteran's service in the Persian Gulf. What is the empirical or statistical basis for that position?

Mr. BROWN. Well, first of all, the evidence that I think we have thus far is kind of like the situation where we actually had a disease, post-traumatic stress disorder, where there wasn't any evidence in the service records, there wasn't anything for many, many years. It used to be called the delayed stress. disorder, delayed stress syndrome, something like that. What is the same here, is that the problems, as we see it, did not show up for many of these veterans while they were in the military. They did not show up within the first year, and the registry was established more than a year after. We feel we ought to give veterans the benefit of the doubt by expanding the presumptive period from 1 year to 2 years.

Chairman ROCKEFELLER. I understand that. But, in effect, you've answered my question by saying that there is no empirical evidence. I am not trying to be negative in my questioning, I am just trying to flesh out whether there is any kind of science or empirical evidence, and the answer is, no.

Mr. BROWN. No, sir. We are just looking for a way to help our Persian Gulf veterans.

Chairman ROCKEFELLER. You indicated in your testimony that veterans who receive benefits under S. 2330 would "in some cases be entitled to compensation on a permanent basis." You also mentioned that in your oral testimony. Secretary Brown, why shouldn't a veteran be entitled to compensation permanently if the service-connected condition persists?

Mr. BROWN. It has to do with my basic philosophy that we should not be granting service connection to people complaining of just joint pain or difficulty sleeping, in the absence of any demonstrated pathological basis for it. I think the Persian Gulf veterans—

Chairman ROCKEFELLER. Now wait a second. Are you assuming, therefore, that would be the kind of disease that Persian Gulf War veterans would have?

Mr. BROWN. No. We're not talking about diseases, and that's the whole question here. We're talking about complaints and symptoms.

Chairman ROCKEFELLER. Symptoms, okay, that they would have.

Mr. BROWN. Yes, sir. That's the problem here. What we are trying to figure out is a way that we can compensate those kinds of problems just for our Persian Gulf veterans. We need to do that until we find out what is wrong with them and then find out a way to fix it. I am thinking this requires congressional oversight. It is a unique period in our history. I want to be able to pay them for 3 years and then come back to this body, and if we say we haven't found anything, to ask for another 3 years. Or, if we have found anything, then we want to be able to discontinue that compensation if we're able to fix it. The bottom line is that we should not be paying compensation for everybody for complaints and symptoms. We should only be paying compensation on a permanent basis for veterans suffering from diseases and injuries.

Senator DASCHLE. If I could interrupt, Mr. Chairman, the House bill troubles me in that regard. They say if we still don't have any information at the end of 6 years, compensation would be terminated. I can't understand the logic behind that. I would like your position on that, Mr. Secretary.

Mr. BROWN. My position is that I think the House bill, if we don't have any evidence, that they would actually extend it and—

Senator DASCHLE. No, no. For one 3-year period and then it is terminated.

Mr. BROWN. Yes, they extend it once if I certify we haven't found any solutions, and then we have to come back to the Congress. What I am saying is, obviously I won't be here then, but I am sure that the next Secretary will come back to you and say—

Senator DASCHLE. Well, but if I were a veteran, I would say, "Are you telling me I am going to have to go through all this again in 6 years if nothing has been determined? That my fate depends upon whether some visionary Secretary of VA or some chairman or somebody is going to raise this issue and it is going to get mired again in the legislative process?" That is, to me, just illogical and completely contrary to what we say to be our willingness to give the benefit of the doubt to the veteran. What that says is we are going to give you a short rope, and the short rope is going to be determined by whether or not we're going to be able to solve these problems. If we can't find any information, you are out of luck unless we give you another short rope.

Mr. Chairman, I just hope, and I am really going to insist on this, that that House provision be dropped. I just think it is wrong and it puts us right into the box we are in this afternoon. We will be here all over again in 6 years unless that provision is amended.

Chairman ROCKEFELLER. Which goes back to the philosophy that Congress shouldn't be in this business.

Senator DASCHLE. Exactly. Exactly.

Mr. BROWN. Let me just respond to that briefly. This is not something that I feel tremendously strong about. The only thing that I want to do, because this is such a unique phase here, is that once we get it fixed, then we go ahead and make the necessary adjustments. I don't have a problem if you say we will make these adjustments once they are fixed. Let it run and then once they are fixed we will make the adjustments. The main point is that I just don't think you want a system where you end up paying compensation for people suffering from back pain or joint pain for the rest of their lives. I just don't think that's—

Senator DASCHLE. But on the other hand, I don't want a situation, Mr. Secretary, where a veteran has a legitimate concern and because of our own inability to find out what caused him to acquire that problem, he again is penalized 6 years from now just because of our own inaction, regardless of how justifiable the inaction may be.

Mr. BROWN. You are 100 percent correct. I think whatever action should be taken, if we do not find some solutions, then we need to make sure there are no disruptions in benefits. The veteran should not suffer. This should be transparent to him or her.

Senator DASCHLE. Well, we can give the benefit of the doubt back to the veteran. If VA can clearly show that there is no legitimate connection between the veteran's condition and his military service, you already have the authority to terminate compensation. But giving the benefit of the doubt to the veteran on a permanent basis seems to me to make a great deal of sense, and I hope as we work through

the differences between the House and the Senate bills, that that one can be reconciled.

Chairman ROCKEFELLER. Yes. And also there is a bit of a presumption in what you said concerning permanent disability—that there might be some frivolous claims. I don't make that presumption. I make the presumption that if people got problems in the Persian Gulf War and the problems persist for a period of years, 2 years, 3 years, and beyond, that they become permanent, then they are for real. We have had before us people who are hurting for real. We haven't had people before us who have some kind of frivolous problems.

Dr. MURPHY. If I may. I don't think we're talking about unreal conditions or frivolous conditions. I think what we are talking about is trying to tie these undiagnosed illnesses to an advance in medical science. We don't know that the veterans who are sick today will, in fact, be sick 5 years from now. We don't know the natural history of these illnesses because they do not represent a single diagnosis or a disease. We need more scientific information at this point.

Chairman ROCKEFELLER. Under current law, would you not then be able to cut them off?

Dr. MURPHY. What the House bill does is it allows us to tie the advancing knowledge to the compensation.

Mr. BROWN. Under current law, once they are on the rolls, we would treat them just like we would treat anybody else, which means they would continue to be entitled to compensation unless the residuals are no longer apparent. So in this case, if we set a veteran up for a 2507 or examination in the future and he no longer complains of joint pain, then we would reduce him to 0 percent. But that's how we would treat it. We would not take the basic service connection away. We would just reduce him to 0 percent. And then let's say three weeks later, his joint pains come back. He comes back to VA, reopens his claim, he says now I have joint pains again, and we will probably put him back on the rolls.

Chairman ROCKEFELLER. I just have a couple more questions. These questions are designed to try to build a record.

Again, Mr. Secretary, you seem concerned that S. 2330 is too broad because it would allow for service connection for an undiagnosed illness within a year of separation rather than within a year of departure from the Persian Gulf—separation as opposed to departure from the Gulf. If career personnel leave service with health problems that plainly arose in service, even if not diagnosed, why would you object to paying compensation for their disabilities?

Mr. BROWN. I'm so sorry, Senator Rockefeller. I missed that question.

Chairman ROCKEFELLER. OK. If career personnel leave service with health problems that plainly arose in the course of their service, even if not diagnosed during that time, why would you object to paying compensation for their disabilities?

Mr. BROWN. I wouldn't. I wouldn't if it is a disease. Let me give you an example. Let's say, for instance, while in the military, a veteran complained of back pain and that's all. He gets out and we give him an examination and we discover that he has arthritis in the

back. We will go ahead and pay him because the initial manifestation of the now diagnosed disease process has been established.

Chairman ROCKEFELLER. OK. Mr. Secretary, on August 17, 1994, there was an article in the Birmingham News indicating your assurance that, "VA is geared up to quickly disperse benefits once legislation is passed." Specifically, what has VA done to prepare for a change in the law?

Mr. BROWN. Two things I would like to mention. First, I recently charged our general counsel with creating a special office. Too much time elapses from the time the law is passed, we create the regulation, give public notice, and then make veterans benefits available. One example, let's just say the recent regulations on Agent Orange. I think I mentioned initially that we were going to do this in January. We didn't actually get the final regulations until August 9. So I asked our general counsel to create a special office whose responsibility it is to make sure that once we have authorization to move forward, we do so. They will now hand-carry the stuff, make sure that it moves quickly, and take as many shortcuts as we possibly can to get it through the necessary process and begin paying as quickly as possible. That was a general statement, but it will apply to anything we have authorization to move forward on.

Second, I have formed a working group to negotiate the contents of the regulations and to expedite their concurrence within the Department. The working group is made up of representatives from the Veterans Benefits Administration, the Veterans Health Administration, the Office of the General Counsel, and the Office of the Assistant Secretary for Congressional Affairs.

Chairman ROCKEFELLER. So you feel confident on that point?

Mr. BROWN. Yes, sir.

Chairman ROCKEFELLER. Good. I'm glad.

This will be my final question, and it has to do with cost estimates. Mr. Secretary, in your testimony you include a cost estimate for S. 2330 of $70.5 million in fiscal year 1995, and a 5-year total cost of $868 million. Mr. Secretary, please explain the basis for this estimate and why it is so much higher than the estimate for S. 2178? When you have stated that with respect to Persian Gulf veterans, S. 2330 is too narrow, how can VA support the notion that there are that many veterans whose claims for service connection of undiagnosed illness were denied in the past and who would make rational showings of service connection today?

Mr. BROWN. I am going to ask John Vogel to respond to the costing formula and methodology.

Mr. VOGEL. Mr. Chairman, as the Secretary mentioned earlier, we are on new ground in developing a cost estimate based on undiagnosed conditions. We don't have a history for that. We have a fairly good history of knowing what degree of disability results from conditions arising in the general public and instances in veterans.

We essentially took a look at the registry, determined the nature and types of manifested symptoms in the registry, applied that information against the underlying disablement, and multiplied that by the average amount of compensation paid. In developing cost estimates, we have to make a number of presumptions. They can be

very difficult to come up with. Our current figures are, we believe, conservative.

Chairman ROCKEFELLER. All right. I want to thank Senator Daschle for his patience as I have moved through this list of questions. And I want to thank you, Mr. Secretary, obviously. I hope our goals are the same; I believe they are the same. I guess Tom Daschle and I are determined to make sure that things work out the way we think they ought to. And I think they will.

Mr. Secretary, I appreciate very much your coming. It was probably a longer period of time than you expected to be testifying, and I apologize for that. I appreciate the fact that you brought four top people with you. Thank you very much, Mr. Secretary.

Mr. BROWN. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Our next panel includes representatives from several veterans service organizations. I welcome Phil Wilkerson from The American Legion, Dennis Cullinan from the Veterans of Foreign Wars, Rick Schultz from Disabled American Veterans, Terry Grandison from Paralyzed Veterans of America, and Paul Skoglund from the Vietnam Veterans of America, accompanied by Bill Crandell.

Paul, I know this is the first time that you will testify before this Committee. I offer, therefore, a very special and warm welcome to you.

Mr. SKOGLUND. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Phil, perhaps you could lead off.

Because of the time constraints and the length of my questioning of the Secretary, I think it would be good if you tried to focus on Persian Gulf War compensation in the comments that you're making. My guess is that your testimony goes beyond that, but let's try to focus on Persian Gulf War veterans.

STATEMENT OF PHILIP R. WILKERSON, DEPUTY DIRECTOR FOR OPERATIONS, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. WILKERSON. Thank you very much, Mr. Chairman.

Over the past 3 years, The American Legion has become increasingly concerned by the fact that many Persian Gulf veterans continue to have serious medical problems which began during or shortly after their return from active duty in the Persian Gulf War. Thus far, the Federal Government has been unable to explain what happened to make so many of these veterans who served in the Gulf ill. VA has established the Persian Gulf War Veterans' Health Registry program and has examined some 27,000 veterans thus far. While a wide variety of symptoms have been reported, no specific cause or causes linking the complaints to service in the Persian Gulf have been identified.

VA has, under current provisions of the law, granted service connection only for the resultant disability of a disease or an injury. VA has recently determined that there is insufficient medical or scientific evidence upon which to base any presumptions relating Persian Gulf service to any particular disability thus far. The absence of an identifiable disease or recognized cause of an illness is making

it nearly impossible for these veterans to establish service connection or receive effective medical care.

We, therefore, wish to express our support for the concept of mandating by statute compensation to those veterans who are disabled as a result of service in the Persian Gulf War.

S. 2178 and S. 2330 propose differing approaches to the problem. The solution offered by S. 2330 is limited to a change in the long-standing definition of the term "disease" for the purposes of entitlement to service connection. The practical effect of this change is to create a variety of new legal and procedural problems for VA in adjudicating disease-based claims by non-Persian Gulf veterans as well as those who served in the Gulf. We do not believe it would accomplish its intended purpose.

S. 2178, on the other hand, takes a more comprehensive approach to the health care and compensation needs of Persian Gulf veterans. It provides certain congressional findings and guidelines on the issue of Persian Gulf-related illnesses, and would authorize VA to pay compensation to Persian Gulf veterans for disabilities resulting from undiagnosed illness or illnesses that become manifest within 3 years of separation from service. It also provides for the development of clinical data on Persian Gulf veterans from the Department of Defense and VA, and would require VA to undertake an outreach program to provide health and benefit information to Persian Gulf veterans, including a toll-free telephone number. One of the most important provisions of this legislation is the requirement for an epidemiological study to assess the short and long-term health consequences of Persian Gulf service on veterans and their families. The House, we note, has already passed legislation similar to S. 2178.

Mr. Chairman, we are concerned by the fact that thousands of Persian Gulf veterans and their families have continuing medical problems. Many are experiencing financial hardship because the veteran has been forced to stop work or has been discharged from service as being unfit. And the process of claims adjudication has been slow and the results generally unfavorable. VA plans, we heard just yesterday, to regionalize Persian Gulf claims processing, which should, in the long run, help improve the timeliness, particularly in awarding pension benefits while continuing to adjudicate the more difficult issue of service connection.

We strongly support the provision of benefits to these disabled veterans as quickly as possible, while a much needed scientific study is underway. We do not want to see this generation of veterans have to go through the same tragic experience as veterans of the Vietnam War did with Agent Orange.

That concludes our testimony, Mr. Chairman.

Chairman ROCKEFELLER. Thank you very much, sir.

[The prepared statement of Mr. Wilkerson appears on page 81.]

Chairman ROCKEFELLER. Rick Schultz.

STATEMENT OF RICHARD SCHULTZ, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. SCHULTZ. Thank you, Mr. Chairman.

Just briefly, if I may, I want to mention just a couple of points before I discuss the Persian Gulf veterans compensation bills. One deals with a COLA, and I just want to say that we support the Senate provisions in the COLA for the "k" [a reference to section 1114(k) of title 38] and the rounding provision. We certainly support your proposal.

One comment regarding H.R. 4088 with regard to the clear and unmistakable error provision. In our testimony, we explain why we feel that there should be some modification to that. I would hope you would consider that because we believe that any errors that are clear and unmistakable should be able to be corrected no matter when that error was made.

With regard to the Persian Gulf veterans compensation bills, I just want to point out that reasonable people can disagree, and I think that is what we have here before us. There is some disagreement on how we can compensate these Persian Gulf veterans. I think everybody here wants to find a way to compensate them, and I believe this is a good process and it is heading us in the right direction.

I understand some of the concerns with S. 2330. I think that there may be some unintended consequences where they believe that there may be a lot of people that you really didn't want to compensate maybe would be compensated by this bill. I just want to point out that you put in here under Section 1(a)(2) and (b), you go down and indicate who can be compensated. I think if you sort of tie in that section under (c), considerations of circumstances of service, when you get down to (B) down there, it says "the common or shared experiences, medical symptoms or signs, or both, of other veterans, including groups of veterans, who were engaged in service similar to the service of such veteran..." In other words, you tie those two together and I think that will respond to some of the problems that the Secretary may have or some of the other veterans groups may have. Where you link that together so that you don't have this unintended consequence where you are compensating another group that was not intended in this bill.

The DAV supports the efforts of the House. We support the efforts of both you, Senator Rockefeller, and Senator Daschle. We think we're all headed in the right direction.

The DAV's main concern with compensating these veterans right now is when we come up to the Budget Enforcement Act with the pay-go provisions, and that is part of our testimony. Quite frankly, we don't like the fact that one new category of wartime disabled veterans—as a result of congressional action—has to reach its hand into the pocket of another veteran to receive compensation. I would ask you to look at that and see if there is any way that this Budget Enforcement Act could be waived, because we just believe that is a terrible way of treating current service-connected disabled veterans to help a new category of service-connected disabled veterans.

Chairman ROCKEFELLER. Ironically, that would not be required at all, Rick, if VA were to go ahead and compensate without new legislation, as I think they could do.

Mr. SCHULTZ. I understand that, Senator.

Chairman ROCKEFELLER. And, incidentally, we also got in the Defense Department authorization bill the major epidemiological study of the prevalence and incidence of symptoms among those who served in the Gulf War, and spouses and children, that you spoke of.

Mr. SCHULTZ. OK. One other point, and I have here with me the report on H.R. 4386, and since it came up in the hearing, if you would allow me just 30 seconds here. In the report on page 8, it does say, "If, at the end of this second three-year period provided for in this legislation, the issues surrounding diagnoses of these illnesses remain, it is the express intention of the Committee that appropriate action should be taken by Congress to either further extend the authority or make it a permanent provision." So I don't believe the House bill would somehow arbitrarily cut these individuals off. And I certainly appreciate your line of questioning and your concern in that regard.

That is all I have, Senator.

Chairman ROCKEFELLER. Thank you, sir.

[The prepared statement of Mr. Schultz appears on page 91.]

Chairman ROCKEFELLER. Dennis Cullinan.

STATEMENT OF DENNIS CULLINAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. CULLINAN. Thank you very much, Mr. Chairman. I will limit my remarks, the VFW's presentation, to the Persian Gulf issue.

This Committee is, of course, aware that the VFW continues to strongly support H.R. 4386. This legislation would provide compensation to veterans suffering from illnesses attributable to service in the Persian Gulf theater of operation. This bill would also provide for increased research of any illnesses reported by Persian Gulf veterans, as well as other programs. Except for the round-down financing mechanism, the VFW deems this legislative initiative to be a strong and appropriate response to problems confronting Persian Gulf veterans, and, of equal importance in these strained budgetary times, it is constructed so that it stands a good chance of being enacted into law.

In our testimony on this legislation before the House Committee on Veterans' Affairs in June, we clearly articulated our preference that there be no delimiting date on the legislation's authority. Even so, we note that without such a stricture, the cost estimate associated with this initiative could well be so high that it would effectively prohibit its being enacted into law or prove to be excessively detrimental to VA programs under the pay-as-you-go provision of the budget accord.

Under discussion today is S. 2178, legislation to provide a program of compensation and health care research for illnesses arising from service in the Armed Forces during the Persian Gulf War, which, as we all know, was introduced by Senator Daschle along with Senator Akaka. This legislation, which is similar to H.R. 4386 and virtually identical to Persian Gulf legislation introduced in the House by Congressman Evans, H.R. 4540, is to be commended for its spirit and thrust. We support in principle that this legislation provides no termination or sunset date for its authority. We note, however, that

as previously stated, this very fact may well preclude its enactment into law or place an undue burden on other VA programs if enacted, due to the consequent high cost estimate under the pay-as-you-go provision of the Budget Act.

Additionally, the VFW notes that this legislative initiative provides for the award of compensation within 3 years of separation from military service, whereas H.R. 4386 provides for the awarding of such compensation for undiagnosed disabilities before the later of October 1, 1996, or the end of a 2-year period beginning on the last date on which the veteran performed active military service in Southwest Asia.

That S. 2178 would, for example, award VA compensation to a Persian Gulf veteran who has made a career of military service, for an undiagnosed disability which supposedly only manifests some 32 years after service in the Persian Gulf, is both excessively liberal, and, we believe, unwise. Given the nebulous nature of the Persian Gulf Syndrome, the VFW supports establishing the precedent of awarding VA compensation to veterans suffering from undiagnosed, and in some cases, unidentifiable disabilities. But to enact legislation which asserts that an undiagnosed disability could somehow lie dormant for 40 years, going totally unremarked, and suddenly become manifest to a compensable degree is unsound, and a virtual assault on the integrity of the VA compensation system.

The VFW would not address another piece of Persian Gulf legislation, and that is S. 2330, introduced by yourself, Chairman Rockefeller, along with Senator Murkowski and numerous other members of the Senate Committee on Veterans' Affairs. Once again, the VFW very much appreciates the spirit and intent of this legislative initiative, but we take exception with its key premise that the Secretary of Veterans Affairs already has the authority under law to compensate Gulf veterans for their undiagnosed disabilities. While VA does possess the authority to award VA compensation on a presumptive basis, presumptive disabilities do in fact have recognized medical diagnoses. The question of presumption comes to bear with respect to whether or not a given disability is incidental to military service.

The Persian Gulf Syndrome is altogether another matter. Its symptoms are often vague and difficult to define, and explicitly have no known diagnosis. This is why the VFW does not believe that the Secretary has the authority to award compensation for the Persian Gulf Syndrome. We wish that he did, sir, but we don't believe that he does. Further, the Secretary of Veterans Affairs and VA general counsel have emphatically stated that VA does not have the statutory authority to compensate such undiagnosed illnesses. Given the Secretary's sterling performance thus far in providing veterans with all benefit of the doubt in his administration of VA, we are inclined to believe that if he did have such authority, he would certainly utilize such.

It is also our assessment that this legislation holds a potential to virtually overwhelm the VA compensation system. Mr. Chairman, this point has been discussed in great detail at today's hearing. But basically, we see a situation here where a Persian Gulf veteran or a

veteran would merely have to assert that there is a symptom, and he would therefore be eligible for VA compensation. Again, we view this as not being sufficiently in keeping with the premise and the foundation of the VA compensation system. It poses an overly liberal approach and could well inundate the system to the point of collapse.

Mr. Chairman, that concludes my statement.

Chairman ROCKEFELLER. I thank you very much.

[The prepared statement of Mr. Cullinan appears on page 106.]

Chairman ROCKEFELLER. Could you just for the record, Rick, also tell me why it is—this is for Rick—that the DAV opposes the Board of Veterans' Appeals legislation?

Mr. SCHULTZ. We oppose?

Chairman ROCKEFELLER. S. 2305, BVA. It has nothing to do with what this hearing is about, it is just for the record.

Mr. SCHULTZ. You mean the part where we say we don't want to have the Board members called veterans' law judges? Yes, we oppose that and we have laid it out in our testimony. Quite frankly, we don't see a need to formalize the system any more. We believe we are going down the road here of making this too formal, and I don't believe that changing the title of the individual sitting to hear a veteran's appeal, why that would make a difference by calling him a veterans' law judge. We don't want them putting robes on and legalizing and more formalizing the system. We just don't support that. We do support the pay comparability though.

Chairman ROCKEFELLER. Thank you, Rick.

Terry Grandison.

STATEMENT OF TERRY GRANDISON, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. GRANDISON. Thank you. Mr. Chairman, I will also limit my oral testimony to the Persian Gulf War compensation bills.

I would like to begin by stating that PVA supports the provisions of S. 2178, which provide for further medical research to resolve the problems of diagnosing the multiple symptoms plaguing some of our veterans who served in the Persian Gulf War. Vigorous research is necessary to develop better modalities of care for ill Persian Gulf War veterans, and would also permit appropriate compensation for their illnesses.

PVA believes that if medical research supports a causal link or association between service in the Persian Gulf and a disease or syndrome, then those conditions should be subject to a conclusive presumption of service connection. Service connection should not be granted for vague symptoms alone. The studies proposed by this bill will hopefully provide the answers to diagnose the various illnesses of some Persian Gulf War veterans. At that time, compensation may be paid in accordance with the severity of the disease as dictated by VA's schedule for rating disabilities. For these reasons, PVA concludes that action on sections which would grant service connection for undiagnosed conditions should be deferred.

Regarding S. 2330, again PVA questions the propriety of granting service connection for vague symptoms alone. Our rationale expressed with respect to S. 2178 applies to this bill as well.

However, if action on S. 2178 and S. 2330 is not deferred, PVA must express our concern about the funding of disability compensation for Persian Gulf War veterans suffering from undiagnosed illnesses. PVA strongly opposes using funds from existing veterans programs and benefits—in this case, dependency indemnity compensation—to compensate Persian Gulf War veterans. PVA urges the Congress to authorize and appropriate additional funds to compensate these veterans.

Mr. Chairman, that concludes my oral testimony. I offer the full text of my testimony to be entered into the record.

Chairman ROCKEFELLER. Thank you, sir.

[The prepared statement of Mr. Grandison appears on page 109.]

Chairman ROCKEFELLER. Paul Skoglund.

STATEMENT OF PAUL E. SKOGLUND, EXECUTIVE DIRECTOR, VIETNAM VETERANS OF AMERICA, ACCOMPANIED BY WILLIAM F. CRANDELL, LEGISLATIVE ADVOCATE

Mr. SKOGLUND. Mr. Chairman, Vietnam Veterans of America appreciates the opportunity to present its views on legislation before the Committee today. I will limit my remarks also to the two bills on Persian Gulf.

Vietnam Veterans of America has a longstanding pledge that never again shall another generation of veterans be forgotten. What we have seen in the Government's response to the Desert Storm Syndrome is a pattern of reluctance paralleling our own experience with Agent Orange.

I agree with Rick Schultz that we should be near reaching an agreement on how to compensate veterans suffering from illnesses attributed to service in the Persian Gulf theater. These veterans and their families are experiencing debilitating health effects and serious financial difficulties. Currently, about 4,000 Gulf War veterans have been rated or are being rated for disability stemming from a constellation of symptoms associated with their service in this brief war. This compares to 10,000 being compensated for predictable disorders.

We wish to thank you, Mr. Chairman, and the other members of this Committee for your diligence in searching for solutions. Vietnam Veterans of America finds much in S. 2330 that is compelling. Defining the terms "disease" and "disability" should make it easier for VA to see its responsibility to look at the needs of the veteran in cases where the ailment is not clearly understood.

The section requiring that consideration be given to places, types, and circumstances of such veteran's service, and to common or shared experiences, medical symptoms or signs, or both, of other veterans will make it possible for VA to take action at a much earlier stage in a future case than it did with either Gulf War Syndrome or Agent Orange during the Vietnam war.

The major problem we see in S. 2330 is that it relies upon the contention that VA has always had the authority to act in such cases. VA did not use that authority when it was clear that Agent Orange

was highly correlated to a variety of illnesses in Vietnam veterans. VA has not used this inherent authority for atomic veterans or for Gulf War veterans. Our experience is that authority to decide to compensate is not enough.

Vietnam Veterans of America supports S. 2178. The bill is specific to the needs of afflicted Gulf veterans. The most important section of S. 2178 is the section detailing compensation. A time period of 3 years for disabilities that manifest strikes the balance between prudence and allowing for the unknown. Testimony before this Committee has made it clear that a period of 1 to 3 years is appropriate.

A strong argument can be made for combining S. 2178 and S. 2330 in a formula that would retain the Gulf War related specifics of S. 2178 and put forward the clarifications, authority, and definition found in S. 2330. Such a bill would parallel the legislation adopted by the House Committee on Veterans' Affairs similar to S. 2178, with the addition of important clarifications of S. 2330.

Mr. Chairman, this concludes my testimony.

Chairman ROCKEFELLER. Thank you very much, Paul Skoglund.

[The prepared statement of Mr. Skoglund appears on page 115.]

Chairman ROCKEFELLER. We have been joined by Senator Murkowski. Frank, have you got some comments here?

Senator MURKOWSKI. I think I will just simply put my opening statement in the record. I apologize for being late, Mr. Chairman, but I had several conflicts.

I do want to reiterate, however, with regard to the issue of compensation for Persian Gulf veterans who suffer from the mysterious but very real illnesses, I think, as the Chairman does, that VA should have taken the initiative to initiate the necessary means of addressing that compensation. I am very critical of the Secretary's lack of leadership on the issue, a Secretary who advised this Committee during his initial hearings of the position that he was going to take as a veterans' advocate. I don't see the advocacy on this issue, and I wanted to make that point for the record. I recognize that the Secretary has gone, but I wanted to emphasize particularly that issue. I think it was a responsibility of VA to get on and address it, as opposed to hiding behind the guise of some of the legalistic policy statements that we've seen forthcoming.

I would ask that the balance of my statement be entered in the record.

[The prepared statement of Senator Murkowski appears on page 42.]

Senator MURKOWSKI. I might say I've read the Chairman's statement and the questions, and I support him 100 percent.

Chairman ROCKEFELLER. Thank you, Senator Murkowski.

I have just one question that I would ask, and I would ask this of Phil, of Dennis, and of Terry. I just want to make sure that I understand the positions of the Legion, the VFW, and PVA on S. 2330. If a Persian Gulf veteran who was healthy when deployed to the Gulf returned home with some sort of mysterious illness which could not be diagnosed, causing him or her to be disabled, is the view of your respective organizations that the veteran should not receive compensation?

Mr. CULLINAN. It is the view of the VFW that he should, indeed, receive compensation.

Mr. WILKERSON. That is The American Legion's position also.

Mr. GRANDISON. PVA's position is that we favor giving compensation to those veterans if there is a causal link or association between service in that theater and a disease or symptom. So, Mr. Chairman, we look for medical data that supports a causal link or association before granting service connection.

Chairman ROCKEFELLER. Dennis, you indicated very broadly that you are for that. But you pretty much dismantled S. 2330 as being too liberal. I am trying to reconcile those two positions.

Mr. CULLINAN. Well, the problem with S. 2330 is—let me take a pragmatic approach at first. As you pointed out earlier, sir, lawyers abound. If the administration takes the stance that the authority does not exist and the Congress takes the stance that it does exist, then even if this bill is enacted into law, what we are going to have is no progress at all and probably it would have to be adjudicated by the courts. That seems to be what is in the offing here. In any event, it would take years and years to be resolved. We believe that there is a good chance that the courts would finally determine that no, indeed, the Department of Veterans Affairs does not have this authority, and the Persian Gulf veterans would be left in the lurch in the process.

We believe that Sonny Montgomery's bill is not ideal, we have problems with it, it has faults, but we think it is enactable, it is a positive first step and we can go from there. We believe that we're being quite liberal in our assessment of going along with saying, yes, undiagnosed disabilities, diseases—whatever that means, because how can you have anything wrong with you if there is not a diagnosis, but so be it—should be compensated, because obviously there are ill health symptoms associated with these undiagnosed problems. That is as far as it should go at this point in time. That is our holding on this, Mr. Chairman.

Chairman ROCKEFELLER. OK. Let me ask another one to Rick and to Paul. In the view of your respective organizations, does the Department of Veterans Affairs have authority under current law to compensate Persian Gulf veterans who are disabled because of undiagnosed diseases, illnesses, and whose symptoms first appeared in service or within 1 year after separation? Paul and Rick.

Mr. SCHULTZ. Yes, in a word. We believe that he has the authority. Secondly, I would like to point out that something that is being lost here is I believe that we are talking about direct service connection here. We are not talking necessarily about all presumptive disabilities. Many of these individuals had these symptoms while in military service. As a matter of fact, just recently we've been made aware of an inspector general's report from, I believe, the National Guard, that says the protocol for discharging these individuals was not followed, and that many of these individuals had these diseases and symptoms and problems at the time of separation, and the military just went ahead and discharged them, got rid of them. Quite frankly, we have gone back to the Secretary of Defense and said you better take a look at all of them. If that happened with the Guard, maybe this happened with everybody. And my point is—it is a long point—my point is there

is direct service connection we're dealing with here, too, and we don't need presumptions for that.

And in response again to your question, we believe the authority exists in law now to compensate these individuals.

Chairman ROCKEFELLER. It is interesting, isn't it, that some people are quite certain that it does and some are quite certain that it doesn't.

Mr. SCHULTZ. As I said, Senator, reasonable people can disagree. I might say Secretary Brown—

Chairman ROCKEFELLER. I don't think reasonable people can disagree on that one.

[Laughter.]

Mr. SCHULTZ. Well, I want to just say one thing, and that is that I have an immense amount of respect for Secretary Brown. I've worked with him for 20 years and I've seen how tenacious he is when he is going after a claim and trying to help an individual. Obviously, in his mind he believes that the law is such that he doesn't have the authority to compensate, and I certainly respect that. But I believe there is sufficient authority in law now to compensate these individuals.

Chairman ROCKEFELLER. And you wish he would use it.

Mr. SCHULTZ. Yes.

Chairman ROCKEFELLER. Paul, I also asked you.

Mr. SKOGLUND. Mr. Chairman, I agree with Rick Schultz. We also believe that the authority is there but we also note that it is apparent that Secretary Brown doesn't feel it is there and he is not going to act under the terms of the current law.

Chairman ROCKEFELLER. Yes.

Frank, do you have anything?

Senator MURKOWSKI. No, other than I think it is time to direct him to act, Mr. Chairman.

Chairman ROCKEFELLER. I agree.

Danny Akaka was going to chair a third panel and he is unable to be here at this point. So I am going to ask our witness on the third panel, Richard Frank, President of the Board of Veterans' Appeals Professional Association, Inc., to submit his testimony for the record. I regret this because not only is this of great interest to Danny, but we will miss having the questioning back and forth in the record. But if Richard Frank on the third panel would submit that testimony for the record, I would be very grateful.

[The prepared statement of Mr. Frank appears on page 122.]

Chairman ROCKEFELLER. I thank all of you for being here, for the courtesy of your attendance, the length of your attendance, and your patience.

This hearing is adjourned.

[Whereupon, at 4:20 p.m., the Committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

PREPARED STATEMENT OF CHAIRMAN JOHN D. ROCKEFELLER IV

I think most people here today agree with me that the most important and pressing issue we have to discuss at this hearing is the matter of compensating sick Persian Gulf War veterans. There has been a great deal of communication between the Committee and VA on this subject over the past few months. This hearing will give us a chance to discuss the various issues involved and help us figure out how to get the job done.

At the outset, I state my firm belief that when a healthy individual enters the military in the service of our Nation, and especially when that servicemember goes to war to defend this Nation, and is sick when he or she returns, VA can and should compensate that veteran. When I use the term "sick," I mean the individual has symptoms that can be verified by objective tests that show the individual is not well.

As I have noted before, I am astonished and enormously disappointed that VA has taken the position that it cannot compensate these veterans. We should be compensating those whose present sickness can be tied to the period of *up to a year* after their separation from service, and then focusing on trying to determine whether and to what extent VA should be compensating those veterans whose symptoms manifested *more than one year* after service. Hundreds, perhaps even thousands, have been denied just compensation because VA has refused to act.

Having said that, however, I want to move on. I want to determine today whether S. 2330 will do the job. In other words, will VA be able to rely on the clarification of the law that would be made by this measure to compensate veterans who are sick now, and whose sickness can be confirmed by objective tests or by observation? I want to fix the problem for Persian Gulf War veterans, and for *all* future veterans.

Let me clarify who I am talking about—veterans who have evidence that their current health problem began in service or within one year of separation from service, evidence that comes from military medical records, VA medical records, examination reports of private physicians, or lay statements by family or friends of the veteran.

So let's cut to the chase today. We don't need to repeat the discussions we already have had. What we are here to determine is whether S. 2330 will accomplish the goal of compensating Persian Gulf veterans. And if not, what is it that we need to do to that bill to accomplish that goal?

PREPARED STATEMENT OF SENATOR GEORGE MITCHELL

Today this Committee will hear testimony on a number of bills important to this nation's veterans and their families. The legislation covers a wide range of issues of vital concern to veterans—from compensation for military personnel suffering from illnesses associated with their service in the Persian Gulf conflict, to job training and educational assistance for those veterans separating from the armed forces.

We as a nation owe a tremendous debt to the men and women who serve in the armed forces, especially those who have served in times of war. The American people want to know that the federal government is doing all it can to respond to the medical and compensation needs of veterans and their families.

If our armed forces are to continue to attract the people America will need to defend its interests in the future, we must meet the needs of the veterans who have served our nation in the past. The military personnel who were sent to the Persian Gulf War should be no exception.

I am proud that legislation sponsored by this Committee ended the intolerable situation that prevented many veterans from receiving medical treatment because the causes of their illnesses remain unknown and cannot be proven to be related to their service. As a result, priority access to medical care is provided Persian Gulf veterans for any illness whose cause is unknown.

An estimated 20,000 Persian Gulf War veterans are believed to suffer from a variety of mysterious illnesses, including chronic fatigue, soreness of joints and memory loss. To date, however, the Department of Veterans Affairs has denied the requests for disability compensation made by many of these veterans. The VA has claimed that it cannot adjudicate a compensation claim unless evidence exists that a disability is service connected; and in the case of the Persian Gulf War veterans, the cause for many disabilities cannot be pinpointed.

The men and women who served in the Gulf War risked their health, their limbs and their very lives for our nation. Now it's our duty to stand by them.

I commend Senator Rockefeller and his staff for their work on behalf of the Persian Gulf War veterans and their families, and I look forward to hearing the testimony of Secretary Brown and the other panelists with regard to this and the other veterans' issues being examined by the Committee today. I am hopeful that the issue of compensability can be resolved so that VA can proceed expeditiously to begin providing compensation to the many men and women suffering from illnesses connected to their service in the Persian Gulf.

PREPARED STATEMENT OF SENATOR DANIEL K. AKAKA

Thank you, Mr. Chairman. I wish to commend you for holding this important hearing on various legislation pending before the Committee, notably the two measures relating to compensation for Persian Gulf War veterans.

I am very pleased to be an original cosponsor of your bill, S. 2330, which clarifies VA's authority to provide compensation for undiagnosed conditions. I am also pleased to be an original cosponsor of Senator Daschle's bill, S. 2178, which makes Persian Gulf War veterans with undiagnosed illnesses eligible for disability compensation.

While the approach in your bill is broader than that embodied in Senator Daschle's bill, both have the immediate effect of providing relief to Desert Storm veterans who have fallen victim to ailments that, in my opinion, can only be attributed to service in the Persian Gulf.

The important issue at stake here is not whether these illnesses can be identified, but whether veterans are suffering. Let's give them the benefit of the doubt, before it is too late to do anything meaningful for them.

On another matter, Mr. Chairman, I want to thank you for including my bill relating to the Board of Veterans' Appeals on today's agenda. S. 2305, which is cosponsored by Senator DeConcini, Senator Jeffords, and Senator Campbell, would restore pay equity between members of the Board of Veterans' Appeals and Administrative Law Judges. It would also establish procedures to ensure that qualified Board members would be reappointed at the end of their statutory 9-year terms.

Both of these provisions would help forestall a mass departure of the most experienced Board members, an event which would only deepen the current adjudication crisis.

Thank you, Mr. Chairman. I look forward to reviewing the testimony presented by our distinguished witnesses.

PREPARED STATEMENT OF SENATOR THOMAS DASCHLE

Thousands of American servicemen and women were healthy when they went to the Persian Gulf and sick when they returned home. They are suffering from illnesses that their doctors are unable to diagnose. Many have watched helplessly as their spouses and children develop unexplainable symptoms.

We do not yet know the cause or causes of these illnesses. There are many plausible theories, but it may take years before the scientific community is able to give us answers. These answers cannot come soon enough for veterans and their families.

What we do know is that these veterans—and now their loved ones—are clearly ill, and they are ill because of their military service. The fact that we are still unable to pinpoint just what it is about their service that is making them sick must not prevent us from assisting these brave men and women in their time of need.

In June, I introduced legislation that will provide compensation to Gulf War veterans disabled to a degree of ten percent or more by undiagnosed illnesses. The bill clearly states that compensation will not be paid where VA can show

that a veteran's illness is unrelated to his or her military service. What my bill does, then, is give the benefit of the doubt to the veteran.

Senator Rockefeller has also put forth legislation which addresses the issue of compensation for undiagnosed illnesses. I am a cosponsor of that bill, which will provide a much needed clarification on an aspect of Title 38 currently in dispute. I would like to outline briefly why I believe both the Rockefeller bill and my bill should be endorsed by this Committee.

Like the other members of the Senate Veterans Affairs Committee, I believe that VA already has the authority to compensate for undiagnosed illnesses, so long as those illnesses become manifest to a degree of ten percent or more within one year of the veteran leaving military service. The requirement of a diagnosis is a convention adopted by VA to make its compensation decisions easier. It is not a requirement of law.

Unfortunately, to the detriment of many Gulf War veterans, VA has refused to acknowledge this existing authority. Enactment of the Rockefeller bill will ensure that in the future, VA is not able to use the convention of a diagnosis to evade its responsibility to veterans who are clearly ill as a result of their military service.

The Rockefeller bill would also require VA to take into account the common military experiences or medical symptoms of veterans with similar service histories in making decisions regarding presumptive service connection. As Vietnam Veterans of America points out in its written testimony to the Committee, this requirement will allow VA to take action in the future when similar problems arise, rather than waiting for Congress to take over as it did with Agent Orange and as it is doing now with the Gulf War illnesses.

But enactment of the Rockefeller bill alone will not adequately meet the needs of our Gulf War veterans. It has been more than three years since the end of Operation Desert Shield/Desert Storm and yet the VA's Persian Gulf Registry continues to grow. A one-year cutoff on eligibility for compensation would clearly leave out many ill veterans deserving of assistance.

My bill would extend compensation to veterans who become ill within three years of leaving military service. Given the fact that we do not know what is causing these illnesses, any cutoff date will necessarily be somewhat arbitrary. However, I believe that my bill strikes a fair balance between the need to assist all veterans whose illnesses are related to their Gulf War service and the need to place some practical constraints on such assistance.

I would also like to comment briefly on the bill I introduced to provide for a permanent extension of the VA flight training program. Many veterans wish to pursue careers in aviation, and yet the prohibitive cost of such training sometimes prevents them from realizing their dream. Four years ago, I authored the current flight training program, which allows veterans to use their educational benefits toward the cost of flight instruction. More than 2,500 veterans have already received assistance in pursuing commercial pilot licenses and various instrument ratings. Without Senate action, however, this successful program will expire at the end of this month.

The House has already unanimously endorsed a permanent extension of the flight training program, and I hope that the Senate will quickly follow suit. Veterans have earned their educational benefits through service to our nation,

and they have even made monetary contributions toward those benefits. It only seems right that these men and women are given a broad array of choices as to how these benefits can be used.

Adding Ailing Family Members to the Persian Gulf Veterans Health Registry

Since the end of the Persian Gulf War, thousands of veterans have developed medical problems which cannot yet be given a conventional diagnosis and which may or may not be related to their military service. We learned, from our experience with veterans exposed to Agent Orange during the Vietnam War, that it is crucial to collect relevant medical data which may later help us find the answers to these questions.

Last Congress, we created the Persian Gulf Veterans' Health Registry to facilitate collection of such information. Each veteran wishing to join the Registry is guaranteed a comprehensive medical evaluation, the results of which are catalogued along with the veteran's name and address. This process provides us with good baseline data about these illnesses, which can then be used to determine the design of epidemiological and other scientific studies. The Registry also permits us to do appropriate follow-up with these veterans.

Since the establishment of the Registry, however, a new development with respect to Gulf War Syndrome has occurred. A growing number of veterans are reporting that their close family members—spouses and children—are also experiencing unexplainable illnesses which they believe are related to their service in the Gulf.

At this time, we cannot determine whether or not the illnesses found in many Gulf War veterans are transmissible. It very well may be that the spouses and children of these veterans are ill from causes entirely unrelated to their partner's or parent's military service. But the key here is that we simply do not know.

Determining if these illnesses are transmissible to family members and if so, how they are transmitted, could lead to a greater understanding of the health problems of Gulf War veterans and improve our ability to address those problems. The amendment I introduce today would expand our access to objective medical data on the issue of transmissibility by including information on the health status of ailing spouses and children in the Registry.

Let me be clear: this amendment does NOT open up the VA health care or compensation systems to non-veterans. Nor is this amendment intended to be a step in that direction. Rather, it is designed to help us determine the nature and extent of the connection, if any, between the illness of a close family member and the veteran's own illness.

Reliable science is the key to unlocking the mysteries of Gulf War syndrome. This amendment will help to ensure that scientists have the tools they need to find the answers which our ailing veterans so desperately await. I hope my colleagues will join me in supporting this amendment.

PREPARED STATEMENT OF SENATOR FRANK H. MURKOWSKI

Good afternoon. We have an ambitious agenda before us today—three panels of witnesses speaking on some 17 bills—so I will not take a lot of time with a statement. I do, however, want to comment briefly two of the bills before us:

- S. 2330 (co-sponsored by every member of this Committee), relating to the compensation of Persian Gulf veterans; and
- S. 2305, a bill to grant significant pay increases to members of VA's Board of Veterans Appeals.

While I look forward to hearing the views of our witnesses today on these two bills, I must say that I already have rather strong feelings on them.

On the issue of the compensation of Persian Gulf veterans who suffer mysterious—but very real—illnesses, I think VA should already be compensating them. And I think the Secretary should take the lead on this issue—and not allow a legalistic interpretation of his authority to impede his leadership. Congress can—and will—clarify VA's legal authority to compensate Persian Gulf veterans, if need be. But I continue to believe—as I think you do, Mr. Chairman—that VA has adequate authority to do the right thing now.

As for the issue of whether Board of Veterans' Appeals members should get salary increases in the range of $15,000 per year, I recognize that the work of the BVA is tough, and that Board members work hard. I also recognize that BVA has suffered some attrition of late. But I also recognize—as I have said repeatedly over the past two years—that BVA's current case backlog is unacceptably high, and its current time frame for turning cases over is unacceptably long.

I do not fault individual Board members. But BVA productivity must increase—and increase substantially—if we are ever to see the day when appealing veterans can expect decisions within an acceptable time frame. BVA's Chairman has already promised that BVA will achieve productivity increases of 27% as a result of single member decisionmaking authority he was granted earlier in this Congress. I look forward to seeing signs of those productivity increases. It seems to me that the time to talk pay raises will be after we have seen them.

I welcome all the witnesses, and I look forward to their testimony. I also note that this will likely be the Committee's last hearing of this Congress. That being the case, I take this opportunity to thank the Committee's Chairman, Senator Rockefeller, for his leadership and for his cooperation over the past two years. I've sat in your chair, Mr. Chairman, and I know it's not an easy job.

PREPARED STATEMENT OF SENATOR STROM THURMOND

Mr. Chairman: It is a pleasure to be here today to receive testimony on various bills related to veterans benefits and veterans health issues. I join you and the other members of the Committee in extending a warm welcome to Secretary Brown as well as to other officials from the Department of Veterans Affairs and representatives from the veterans service organizations who will

testify today. This Committee appreciates the work you do on behalf of your organizations and for all veterans.

Mr. Chairman, of particular concern today is legislation regarding compensation for Persian Gulf War Veterans. I know that the Department of Veterans Affairs is concerned for the well-being of those who served in the Persian Gulf. The Department has taken action to address the many mysteries surrounding the various ailments, commonly described as "Persian Gulf Syndrome." Such actions include the establishment of the Persian Gulf Registry to provide health exams and health monitoring of Veterans, as well as the institution of various research programs to identify the causes of the unexplained illnesses reported by Persian Gulf Veterans.

While the Department has accomplished much, there is some disappointment with the Department's expressed view regarding compensation of Veterans suffering as a result of their service in the Persian Gulf.

Mr. Chairman, as we discuss the issue of compensation, let us keep in mind that we are dealing with more than words or legal interpretations. What is at issue is the treatment of human beings—men and women who served their country. This Committee has heard the testimony of numerous Veterans who went to the Gulf in excellent health and returned with various illnesses and disabilities. Included in the list of complaints are swellings, headaches, rashes, pain in the joints, chronic fatigue, neurological disorders, respiratory troubles and flu like symptoms.

With regard to awarding disability compensation, this Committee expressed its concerns to Secretary Brown on the failure to grant service connection to those veterans with clearly disabling conditions and stated its strong belief that the Department had sufficient legal authority to do so.

Mr. Chairman, as you are aware, the Department has taken a contrary position, based on its analysis by the Department's Legal Counsel. This hearing will allow the Department to clarify and explain its position. If, after hearing the testimony and reviewing the legal requirements, it is determined that legislative relief is necessary, I will support such action.

Mr. Chairman, I know our agenda is full, with many other bills to be considered. I appreciate the extensive prepared testimony provided by Secretary Brown which addresses each of the proposals.

I thank you, Mr. Chairman. I look forward to reviewing the testimony of the witnesses and working with you to bring this issue to a favorable resolution.

PREPARED STATEMENT OF JESSE BROWN, SECRETARY OF VETERANS AFFAIRS

Mr. Chairman and members of the Committee: I am pleased to present the Department's views on several bills which are the subject of today's hearing. In particular, I want to thank you for giving me this opportunity to discuss the health problems of Persian Gulf veterans.

Mr. Chairman, I want to begin by stating that we, in VA, recognize the deep concern you and others in the Congress have shown regarding the health and well-being of our Persian Gulf veterans, and I want to emphasize that we share that concern. We recognize, as do you, that numbers of Persian Gulf veterans

are suffering from a variety of physical and psychological problems. We intend to do everything we can to assist those who are suffering.

We will continue to look for answers to the perplexing health problems these veterans face. We are closely monitoring the Persian Gulf Registry to identify any patterns of illnesses and complaints. So far, we have provided over 24,000 veterans in our Registry with comprehensive physical examinations, baseline laboratory tests, and other tests when indicated.

On July 29, 1994, I announced the creation of three environmental hazards research centers designed to focus on the possible health effects of environmental exposures of Persian Gulf veterans. A total of 14 individual Persian Gulf-related research projects are scheduled to be conducted at these centers.

The establishment of the three new centers supplements several VA Persian Gulf health research initiatives already in progress. These initiatives include the Persian Gulf Veterans Coordinating Board consisting of the Departments of Veterans Affairs, Defense (DOD), and Health and Human Services (HHS), formed to focus and coordinate the efforts and resources of the three departments on the health concerns of Persian Gulf veterans, and the contract with the National Academy of Sciences to review the health effects of Persian Gulf service and to make recommendations regarding epidemiological research.

In addition, the same three Departments convened an independent panel of experts to evaluate current scientific knowledge on this subject and to recommend priorities for further research. That panel met at the National Institutes of Health on April 27-29 and determined that it is impossible to accurately establish a single case definition for "Persian Gulf Syndrome." The panel members also concluded that prematurely trying to establish a case definition for this illness, may be misleading and inaccurate.

Given the present state of scientific and medical knowledge, it is not now possible to attribute many of the symptoms and illnesses of some Persian Gulf veterans to service-incurred disease or injury. Specific legislation which will allow us to compensate them now is necessary. We must not make them wait until our research efforts provide definitive answers.

Mr. Chairman, our goals are the same as yours—to determine what is causing the health problems of Persian Gulf veterans and to provide them with the assistance they need as quickly as possible. In the area of compensation, the unexplained illnesses reported by our Persian Gulf veterans present a unique situation. Through no fault of their own, these veterans are at a disadvantage in establishing eligibility for service-connected-disability benefits due to the fact that they exhibit no general manifestation of a characteristic set of signs or symptoms. There is also a lack of scientific and medical evidence concerning the nature and causes of their ailments.

I am not comfortable with the disagreement that seems to have arisen between our Department and your Committee with respect to my authority to address this issue without the need for specific legislation. While I would like to think that this may be more in the nature of a misunderstanding with respect to the basis of our position, I realize the importance of moving forward together. It might be useful, however, to briefly reiterate the basis upon which I have premised my recommendation for additional legislative authority.

As you are aware, my General Counsel has advised me that my authority to promulgate rules providing service connection for unexplained illness is restricted by the statutory requirement that we provide compensation for disabilities resulting from personal injury or disease. Based upon my many years of experience in addressing compensation-related issues on behalf of this Nation's veterans, I cannot disagree with my General Counsel. Simply put, there is yet insufficient knowledge to indicate that the symptoms or illnesses being reported by Persian Gulf veterans constitute either Gulf-related disease, manifested by a characteristic set of signs or symptoms, or Gulf-related injury. In other words, we cannot reach the requirements of the law as it now reads.

S. 2330

Section 1 of S. 2330 is intended to address this situation by defining "disease" for purposes of entitlement to disability compensation as "any deviation from or interruption of the normal structure or function of any part, organ, or system of the body of the individual that is manifested by a symptom or sign (or symptoms or signs) the etiology, pathology, and prognosis for which is known or unknown."

Simply stated, we seem to be operating from different definitions of "disease"—one of the key elements in awarding service connection under 38 U.S.C. §§1110 and 1131. General Counsel opinions which I have relied upon have spelled out the meaning of that term as set forth in *Dorland's Illustrated Medical Dictionary* (26th ed. 1974). S. 2330, on the other hand, creates its own definition.

Mr. Chairman, we have very serious reservations regarding the change that S. 2330 would make in the definition of disease that VA has been applying for many years.

There should be no misunderstanding as to how VA provides compensation for service-connected disabilities. Currently, VA permits compensation to be paid only if three specific factual findings are made regarding an individual claim. First, it must be determined that the veteran suffers from a disability. Second, it must be determined that the disability results from personal injury or disease. Third, in the absence of any controlling legal presumptions, it must be determined that the disability causing disease or injury was incurred in or aggravated by service. By statute, this is the current "test" required for determining whether to provide compensation for a service-connected disability.

Although S. 2330 would authorize an award of service-connected compensation benefits to some Persian Gulf veterans suffering from unexplained illnesses, its impact is not aimed specifically at addressing *their* unique problems. As a result, I believe it is both overly broad in terms of its potential effects on VA disability compensation and too narrow to be of help to many Persian Gulf veterans whom we need to assist.

Regarding the breadth of S. 2330, the new authority which would be created by its enactment would be permanent and so broadly applicable and open-ended as to profoundly impact the entire VA disability compensation system. In fact, we are concerned that it could undermine the integrity of the system.

Currently, VA pays compensation to 2.2 million veterans for approximately 5 to 6 million disabilities resulting from personal injury or disease incurred or

aggravated during active service and 300,000 surviving spouses and dependents of veterans who died as a result of such injury or disease. If the definition of disease provided by S. 2330 were adopted, all veterans who file claims alleging disability based upon a complaint of a service-incurred or service-aggravated symptom or symptoms, irrespective of whether they served in the Persian Gulf, would be potentially eligible for benefits. This would be so even though the symptoms might be unsupported by any objective clinical findings, and do not constitute disease under our currently accepted definitions.

In addition, this liberalizing law would apply to all 27 million veterans and would enable all veterans whose claims have previously been denied to file new claims for benefits on the basis of symptoms alone.

Finally, veterans who are awarded benefits based upon this new definition of disease would in some cases be entitled to compensation on a permanent basis.

Ironically, although S. 2330 could have extensive, and perhaps unforeseeable, effects on the VA compensation program, it would not achieve for many Persian Gulf veterans with undiagnosed illnesses the relief we believe they should have. S. 2330 generally would leave veterans with the burden of proving that their symptoms were incurred in or aggravated by military service. This is ordinarily done through documentation in the veteran's military medical records or by circumstantial evidence or lay or expert statements showing the problem existed in service or was caused by an event or events that occurred during the veteran's service. We know that, in many instances, Persian Gulf veterans do not have anything in their military records to support their claims. The current lack of scientific data and medical information associating these veterans' health problems with their service in the Gulf may prevent establishment of service connection.

We favor specific legislation giving these veterans appropriate help. As I testified before the House Committee on Veterans' Affairs at a June 9 subcommittee hearing, the Administration supports legislation that would provide compensation to Persian Gulf veterans, for a three-year period, for chronic disabilities resulting from undiagnosed illnesses that become manifest to a 10% disabling degree within two years after the veteran left the Persian Gulf theater of operations. I believe it is fair, in light of the clear need for further research, to relieve them of the burden of proving service connection by establishing a two-year presumptive period. I also believe that legislation tailored along these lines will respond in a fair and compassionate way to their specific circumstances.

I recognize that, as you noted in your statement introducing S. 2330, the bill is intended to make it possible to add certain chronic symptoms to the list of chronic diseases that, under 38 U.S.C. §1112(a), are presumed to be service connected if they become manifest to a 10% degree within one year after discharge.

There are three problems with trying to follow that approach for creating presumptions that would be available to Persian Gulf veterans. First, I know of no satisfactory basis on which I could determine which chronic symptom or set of symptoms to add to this list. As the NIH workshop concluded, it is not possible at this point to arrive at a case definition for the unexplained illnesses of these veterans. As I have stated previously, I do not believe I have the

authority to create presumptions without a medical or scientific basis. This would apply with respect to adding additional diseases or symptoms to the list of chronic diseases in section 1112(a).

Second, even if such a set of symptoms particularly appropriate to Persian Gulf veterans could be identified, a question would arise as to whether I would be authorized to limit the applicability of the new chronic "disease" to Persian Gulf veterans. Rather, I believe it may have to be available to all veterans.

Third, I do not believe it would be appropriate, when trying to address the needs of Gulf veterans, to provide a presumptive period that begins on the date of discharge as required by section 1112(a). Under that approach, for the reserve forces, who were generally released from active duty by the fall of 1991, the presumptive period would expire in 1992. The same would be true for any others whose active service terminated soon after they left the Gulf in 1991. On the other hand, under the approach in S. 2330, career personnel who serve for many years after leaving the Gulf would have a presumptive period that might continue for a decade or more after the possibly toxic exposures ended. The Administration's recommendation would be to provide all Gulf War veterans with a two-year presumptive period beginning on the date of departure from the Gulf.

We believe many of the individuals who left the service shortly after returning to the United States did not establish within their first year a record, such as doctors' visits, that they could use to show the requisite manifestation of a 10% disability within that one-year period. In this regard, I also note that VA did not actually begin full-scale operation of our Persian Gulf registry until November 1992, and many Gulf veterans may have first presented their health concerns in connection with a Registry examination that was not available until after they had been out of the service for more than a year.

Thus, I believe strongly that the Administration's position calling for a two-year presumptive period, beginning when the veteran departed the Persian Gulf, is needed and would be beneficial to these veterans.

The proposed amendment to section 1154(a) would require that VA revise its regulations regarding service connection to assure that consideration is given to the existence of similar medical symptoms or signs among groups of veterans who had similar service. We assume what is intended is that VA take cognizance of increased incidences or prevalence of diseases among veterans of similar service. In fact, determining whether Persian Gulf veterans are exhibiting symptoms of diseases at unusual rates is one of the goals of the ongoing research. Should any discernible patterns emerge, compensation policies may be adjusted accordingly.

Mr. Chairman, I realize we may still have differences of opinion with respect to the approach we used to address this issue. I would hope, however, that your Committee could find a way to join the Administration and your colleagues in the House to support legislation which will allow us to move forward together as soon as possible to meet the compensation needs of our Persian Gulf veterans.

Enactment of S. 2330 would result in an estimated benefit cost of $70.5 million for fiscal year 1995 and a five-year estimated benefit cost of $868 million. These costs are subject to the pay-as-you-go provisions of the Budget

Enforcement Act and must be offset by equivalent savings if sequestration of funds is to be avoided.

S. 2178

S. 2178 would authorize VA to provide compensation on a presumptive basis to certain Persian Gulf War veterans and provide for increased research into illnesses reported by Persian Gulf veterans. This bill deals with some of the problems of Persian Gulf veterans in the same manner in many respects as does H.R. 4386, which VA is on record as generally supporting. For the following reasons, we prefer the provisions of H.R. 4386 with certain revisions.

Section 4 of S. 2178 would direct VA to establish a uniform case assessment protocol to ensure thorough assessment, diagnosis, and treatment of all veterans suffering from illnesses of unknown origin that may be attributed to service during the Persian Gulf War. Indeed, we are already working with the Department of Defense and have developed such a protocol.

As a second task, section 4 would require VA to develop case definitions or diagnoses of illnesses of unknown etiologies that may be associated with such service within 120 days after enactment of the legislation or report to Congress why this is impossible. We can assure you that every effort will be made to accomplish this task as soon as possible. However, to date, VA and DOD advisory groups have been unable to establish a case definition for the unusual medical problems experienced by some Persian Gulf veterans, and the NIH Technology Assessment Workshop Panel recently concluded that it would be inadvisable to develop a case definition at this time. Therefore, the 120-day deadline appears unrealistic if the goal is a case definition with a sound scientific and medical basis.

In order to carry out these provisions, VA would have to reallocate current resources in the health care system to cover the costs associated with these new responsibilities. Enactment of section 4 would result in estimated annual costs of $42.6 million and $213 million for Fiscal Years 1995 through 1999 and nonrecurring costs of $1.68 million in order to provide full-time program staff to carry out its requirements. The 14 VA medical centers which we estimate would be most affected based upon their previous Persian Gulf Registry caseload would each require 5 additional full-time employee equivalents (FTEEs) to fully implement comprehensive assessment and follow-up of these veterans. Medical centers with smaller caseloads would require fewer FTEEs, ranging from 1.0 to 4.0 based on previous Registry caseloads.

Section 5 would require that VA establish an outreach program for Persian Gulf veterans and their families to inform them of the availability of medical care and other benefits provided by VA and DOD. In addition, the bill would require that the outreach program include distribution of an annual newsletter reporting on VA benefits available to Gulf War veterans and the results of Government-sponsored research and a toll-free telephone number to provide such information. Any need for these two provisions has been overtaken by events. VA currently publishes a newsletter called "Persian Gulf Review" and already has a toll-free number which provides this information, along with information about other VA benefits.

Section 6 of S. 2178 would create a presumption of service connection for disabilities resulting from undiagnosed illness which became manifest to a

degree of 10% or more within three years of separation from active military, naval, or air service. Service connection would not be presumed if there is a preponderance of evidence either that the disability was not incurred during service in the Persian Gulf theater or that the veteran suffered an injury or illness which is a recognized cause of the disability after leaving the Gulf theater.

As I explained earlier, based upon our initial review of the medical histories provided by Persian Gulf veterans we recommend that the presumption apply to an undiagnosed illness which became chronically disabling to a degree of 10% within two years after Gulf service. We believe such a period to be adequate to include those disabling conditions for which legitimate questions regarding connection to Gulf service have been raised.

VA favors measuring the presumptive period from the veteran's departure from the Southwest Asia theater of operations, rather than date of discharge from active service as S. 2178 provides. Using the date of service separation as the baseline for when the presumption arises could result in significant disparities of application of the provision, depending upon how much post-Gulf theater service a veteran had. Moreover, when Congress has created presumptions based on exposures to environmental hazards in service, such as ionizing radiation (Pub. L. No. 100–321) and herbicide agents in Vietnam (Pub. L. No. 102–4), it has provided that the presumptive periods be measured from when exposure to the hazard would have ended.

VA favors an "affirmative evidence" standard over the "preponderance of evidence" standard proposed in S. 2178. The "affirmative evidence" standard is consistent with 38 U.S.C. § 1113 which establishes the standard for rebuttal of the presumption of service connection for any disease listed in section 1112 or 1116.

VA is opposed to the requirement in S. 2178 that the implementing regulations define a 10% disability as "mild impairment of social and industrial adaptability" and a 100% rating as "demonstratively unable to obtain or retain substantial gainful employment." The schedule for rating disabilities set forth in part 4 of title 38, Code of Federal Regulations, is used to evaluate all disabilities caused by diseases and injuries resulting from or incident to military service to determine whether they are manifest to the requisite degree. We see no need to deviate from the existing schedule for purposes of rating disabilities resulting from undiagnosed illnesses.

S. 2178 would authorize payment of disability compensation until scientific evidence demonstrates that the illnesses for which compensation would be awarded are not connected to Persian Gulf service. We prefer an approach which would provide compensation on an interim basis while scientists investigate the nature and etiology of ailments afflicting these veterans. Such an approach, as provided in H.R. 4386 for example, would give Congress the opportunity to reconsider the issue of disability compensation for Persian Gulf veterans based upon undiagnosed illnesses in three years in light of the research data available at that time.

Enactment of section 6 would result in estimated benefit costs of $20.2 million for Fiscal Year 1995 and $92.2 million for Fiscal Years 1995 through 1999. The estimated benefits costs are based on a sampling of documented cases currently available in VA's Persian Gulf Registry. VA's Registry

currently contains information on over 24,000 cases; however, over 329,000 veterans served in the Persian Gulf, with another 370,000 Persian Gulf veterans still on active duty. Therefore, actual costs may exceed our estimate. These costs are subject to the pay-as-you-go requirement of the Budget Enforcement Act and must be offset by equivalent savings in order to avoid a sequester of mandatory programs.

Section 7 would require VA to enter into an agreement with the Department of Defense to have access to all of DOD's clinical data on those who served in the Persian Gulf War and remain on active duty. This section would also require VA to continually compile and analyze all clinical data obtained on Persian Gulf War veterans in connection with examinations and treatment furnished by VA and DOD that are likely to be useful in determining the association between the undiagnosed illnesses of veterans and their service during the Persian Gulf War and developing a case assessment protocol or case definitions. VA would be subject to significant annual reporting requirements in connection with these activities.

We believe this provision is unnecessary. VA has been compiling and analyzing all available data continually that could lead to meaningful conclusions about the health problems experienced by Persian Gulf veterans and will continue to do so.

Section 8 would require VA to contract for an epidemiological study to assess both the short-and long-term health consequences of service in the Persian Gulf on veterans and their immediate family members. VA also would be required to contract with the National Academy of Sciences for the Medical Follow-up Agency (MFUA) of the Institute of Medicine to review proposals to carry out the epidemiological research, oversee such research, and review the research findings. Section 8(e) of the bill would authorize $7.5 million for Fiscal Years 1995 through 2000 for this epidemiological study.

Section 706 of the Persian Gulf War Veterans' Health Status Act, Pub. L. No. 102–585, tit. VII, 106 Stat. 4943, 4978 (1992), requires the Secretaries of Veterans Affairs and Defense to contract with the MFUA to review existing scientific, medical, and other information on the health consequences of Persian Gulf service and to recommend whether there is a sound scientific basis for an epidemiological study on the health consequences of such service. In view of this requirement, we submit it is premature to mandate an epidemiological study before taking into account the MFUA recommendations.

Section 9 would authorize $5 million for Fiscal Years 1995 through 1998 to fund research on the health risks and effects associated with service during the Persian Gulf War, and effective treatment modalities for such effects. We support this provision but believe it can be accomplished within existing Federal resources.

S. 2325

Section 1 of the bill would extend the program authority of the Compensated Work Therapy and Therapeutic Transitional Housing Demonstration Program (CWT/TR) through Fiscal Year 1996.

This innovative and cost-effective program offers both therapeutic work opportunities and community-based, supervised, transitional housing to eligible veterans with mental illnesses and substance-abuse disorders.

Given the program's demonstrated therapeutic and cost effectiveness, we strongly urge the Senate to reauthorize this program through FY 1998.

Section 2 of the bill would give VA permanent authority to contract for care, treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities for eligible veterans suffering from alcohol or drug dependence or abuse disabilities. Evaluation suggests that this program may be a cost effective alternative to inpatient care and be effective in lowering chronic substance abuse patients' use of VA health care services. However, there is not yet conclusive evidence to support a permanent authorization of this program. We suggest that the program's reauthorization be extended through FY 1998. We will continue to evaluate the program's effectiveness during that time.

Currently, over 100 VA medical care facilities contract with 373 community residential treatment programs to provide additional rehabilitation opportunities to veterans with substance-abuse disorders following a period of inpatient treatment. Approximately, 6,400 veterans are treated in these contract care programs each year.

The evidence bears out that this program provides another effective level of care for veterans with severe substance-abuse disorders at a low cost. Extending the authority for this program would allow VA to continue providing therapeutically effective and cost effective residential rehabilitation.

Section 3 would re-authorize through FY 1997 the program authority for Homeless Veterans Reintegration Projects under the Stewart B. McKinney Homeless Assistance Act and authorize appropriations for these projects. Although it is the Department of Labor which is charged with carrying out this program authority, we have worked closely with that Department in connection with many reintegration projects and have become familiar with the Labor Department's long-standing and highly effective Homeless Veterans' Reintegration Projects Program.

The Homeless Veterans Reintegration Projects (HVRP) programs are designed to eliminate the seven main barriers that prevent homeless veterans from successfully returning to productive lives: unemployment, lack of transitional housing, inadequate drug and alcohol treatment, transportation problems, lack of job skills, depressed local labor markets and resistance to hiring the homeless. In addition, these innovative projects use veterans who have experienced homelessness themselves, to reach out to other homeless veterans.

The VA's Health Care for Homeless Veterans (HCHV) programs and DOL's HVRP programs have jointly built strong collaborative relationships to better meet the multiple needs of homeless veterans. Our HCHV programs, which have been in existence since 1987, have developed and implemented many collaborative projects with other Federal, state and local governments and with non-profit organizations. Some of the most successful of these partnerships have been with the DOL-funded HVRP programs. DOL has informed us that 8,800 homeless veterans were served in the current program in FY 1993.

We fully support continuation of this program through FY 1997 and otherwise defer to the comments of the Labor Department on this matter.

Section 4 of the bill would remove the pilot status of VA's current program for Homeless Chronically Mentally Ill veterans (HCMI), codify the program as section 1720E of title 38, United States Code, and extend the program authority through Fiscal Year 1998. This section would also delete an existing reporting requirement under the Veterans' Benefits and Services Act of 1988.

This program was first authorized in February 1987, through Public Law 100–6, and preceded the Stewart B. McKinney Homeless Assistance Act by several months. The program has enjoyed considerable attention and over the years has gained recognition and respect for providing effective treatment and assistance to homeless veterans suffering from mental illnesses, including substance-abuse disorders. VA's Homeless Mentally Ill program has proven to be effective in providing services to a population of veterans who are most disadvantaged, most needy and often most difficult to reach and serve.

Section 5 of the bill would establish reporting requirements pertaining to VA activities to assist homeless veterans. We have no objections to those requirements. However, we request that the due date for the annual report be changed from February 1 of each year to April 15 of each year. The February 1 due date does not give the Northeast Program Evaluation Center (NEPEC) enough time after the end of the fiscal year to gather all the necessary data from various programs and facilities, verify the data for accuracy, analyze the data, write a report, and receive concurrences from VA staff before the report is released to Congress. This process takes about six months; therefore, an April 15 due date would be preferable.

Similarly, we have no objection to the reporting requirements of section 6, requiring VA to up-date annually the assessments carried out by VA medical centers and regional offices to identify the needs of homeless veterans and plans developed by VAMC's, VARO's and community service providers to meet the needs of homeless veterans.

Section 7 would require VA to establish a program of five demonstration projects in various geographic locations under which the Department would enter into partnership agreements with community-based organizations to jointly provide services and assistance to homeless veterans. We oppose this section.

Because VA has long recognized that no single organization (VA or non-VA) can provide a complete range of services to meet all the needs of homeless veterans, VA's HCHV programs have been entering into partnerships with community-based service organizations for several years. The particular value of locally-founded partnerships (as opposed to nationally mandated partnerships) is that each partner can determine, with needed flexibility, the resources and services which it can contribute to the partnership. A partnership, which is somewhat similar to the one described in the proposed legislation, currently exists between VAMC's Milwaukee and Tomah and the Wisconsin State Department of Veterans and Military Affairs. The partnership is in the early stages of development and has been well supported by the medical center and by specialized homeless veterans resources distributed from VA Central Office. Different types of partnerships have also been developed between VA Homeless Veterans Treatment Programs and non-VA organizations in locations

across the country (including Pittsburgh, Dallas, Los Angeles, Boston and Buffalo). These partnerships have clearly demonstrated the value of this type of collaboration. (Many others also exist, although on a smaller scale.)

We believe that "demonstration projects" should be reserved for activities and programs that have not yet been established where distinct value could be derived from limited implementation and where thorough program assessments would be conducted before similar projects are encouraged. As we have pointed out, the proposed partnerships described in section 7 already exist on a wide scale. Thus, the proposed "demonstration project" is not, in our view, necessary.

Furthermore, it is not clear what section 7 would require of VA. It seems inconsistent to require VA to contract with community-based homeless service organizations to provide services and assistance to homeless veterans, while requiring VA to provide an array of services to the homeless veterans covered by the joint agreements. It is also not clear where VA personnel would be required to deliver the mandated services. It is also not stated whether VA would have to pay a contracting organization for providing covered services and assistance under this section. Likewise, it is not stated under which statutory basis homeless veterans would be eligible for services and assistance under section 7.

We are also very concerned that section 7(d) would place the authority to conduct an evaluation of this program with an "appropriate non-Federal entity," which would be required (under contract with the Secretary) to conduct a study of the Demonstration Program to determine its cost-effectiveness. This entity would also be charged with comparing this program with other similar programs and making appropriate recommendations for improving and expanding the program or any agreement pertaining to the project. We believe that this provision is unnecessary.

The requirement to conduct an external evaluation would result in unnecessary and redundant program evaluation costs. These funds, moreover, would have to be diverted from those currently identified in the FY 1995 budget for new or expanded homeless veterans treatment programs. Hence, the proposed external review would be at cross-purposes with the Administration's goal of stream-lining Federal programs by eliminating duplication of resources.

For all these reasons, we oppose section 7 and urge that it be deleted in its entirety.

Section 8 would amend Public Law 102–590, The Homeless Veterans Comprehensive Service Programs Act of 1992 (the Act), in two respects. The Act authorized new programs to combat homelessness among veterans, namely the Comprehensive Centers Pilot Program and the Grants and Per Diem Payment Program, which assists public or non-profit private entities in establishing new programs that serve homeless veterans. The Act also expanded existing outreach and other VA assistance programs for homeless veterans.

Section 8 would increase the authorization for new Comprehensive Homeless Centers under the Act from four to twelve. While sympathetic to the intent of this legislation, it would be premature to triple the size of this program before its effectiveness has been demonstrated.

This section would also repeal the current funding limitation in section 12 of Public Law 102–590 that prohibits VA from using funds to carry out program initiatives under sections 2, 3, and 4 of that Act (*i.e.*, the Comprehensive Homeless Centers Program and the Grants and Per Diem Payments Program) unless specifically provided for in an appropriations law. With the repeal of this statutory limitation, VA will not have to rely on a specifically designated appropriation to establish and operate those programs.

Although authorized in 1992, VA was unable to implement the Grants and Per Diem Payment Program until Fiscal Year 1994, when Congress specifically appropriated funds for the program. We understand that Congress no longer intends to appropriate funds for particular VA homeless programs. Should Congress decide not to appropriate money specifically to the Grants and Per Diem Payment Program, we would be unable under current law to fund this program, which is only now just getting off the ground. Since VA desires to maintain funding support for this program, we believe that the repeal of this funding limitation is critically important.

Since Public Law 102–590 is being discussed, I thought this would be an opportune time to bring the Committee up to date on the status of the grant program authorized by this Act. VA received over 100 applications and we expect to issue grants to approximately 32 programs prior to the end of the fiscal year. This includes funding 20 vans, which is the number authorized under the legislation. VA believes that vans are a low cost and cost-effective mechanism to assist community based organizations (CBO's) in providing improved services to homeless veterans, and to expand outreach efforts directed towards engaging homeless veterans in therapeutic programs.

VA has received a number of comments from existing community based organizations concerning their inability to participate in the program as defined under this Act. We are in the process of reviewing these comments and we will continue to pursue this issue.

We have also heard from a number of applicants, and some CBO's that did not apply, that the application process is very cumbersome and that many worthy agencies and projects were excluded from consideration because they were unable to complete the application. We are concerned that many organizations that serve veterans do not have significant experience in grant writing, and its technical requirements. Therefore, we are exploring ways that we may help future applicants.

One final problem we discovered during the process of implementing this program is that the law does not provide any mechanism for VA to recapture grant funds in situations where the grant recipient does not use the funds for the purpose for which they were intended.

S. 2094

S. 2094 would make permanent VA's authority to approve educational assistance benefits for vocational flight training under chapters 30 and 32 of title 38 and chapter 106 of title 10, United States Code.

Congress added VA's current temporary authority to approve vocational flight training benefits through Public Law 101–237, permitting individuals eligible under the Montgomery GI Bill-Active Duty (chapter 30) and the

Montgomery GI Bill-Selected Reserve (chapter 106) to receive such benefits. Similar benefits for vocational flight training under the Veterans' Educational Assistance Program (chapter 32) were added by Public Law 102–16. Both laws provide that vocational flight training assistance will not be paid for a course commencing after September 30, 1994.

In addition to establishing flight training benefits, Public Law 101–237 mandated that VA prepare a report to Congress evaluating the utilization and performance of vocational flight training under chapters 30 and 106. The purpose of this survey was to obtain information on the number of recipients paid educational assistance allowance for flight training, the trainees' vocational objectives, the extent to which the training assisted recipients in achieving employment in the field of aviation, the extent to which the training was used for recreational or avocational purposes, and the total nonreimbursable flight training costs paid by recipients.

The study findings indicated that an overwhelming number (90 percent) of those surveyed had one of two primary vocational objectives in taking their training: to obtain a job as a commercial pilot or to obtain a job as a flight instructor. Approximately 56 percent of the total vocational flight training survey respondents are currently employed in the field of aviation. Over 27 percent of those who were not employed were still in training. Fewer than 1 percent of total flight training survey respondents admitted that they were using the training for recreational purposes.

Based on the survey findings, it appears that for the vast majority of trainees vocational flight training courses do not tend to serve avocational, recreational and/or personal enrichment goals rather than basic employment objectives.

Mr. Chairman, since it is indicated that this training leads to jobs for the majority of trainees, the current vocational flight training appears beneficial and, therefore, we support enactment of S. 2094.

As a technical matter, however, we note that S. 2094 contains no effective date provision. Since the current law provides that no flight training benefits may be approved for a course of training begun on or after October 1, 1994, we recommend that the amendments made by this bill explicitly be made effective on that date. This would ensure against any gap in authority to provide benefits for flight training in the event S. 2094 is not enacted prior to the conclusion of the current temporary authority.

S. 2305

Mr. Chairman, there are two bills on today's agenda which would restore pay equity between members of the Board of Veterans' Appeals (the Board) and administrative law judges. Although there are differences in approach, we very strongly support the overall aim of both S. 2305 and title III of S. 1927: to ensure that the Board is able to retain, and veterans and their families are able to rely on, the highest quality decision-makers at the Board. We would be pleased to work with you, with Senator Akaka and with the House Committee on Veterans' Affairs to reach a mutually-agreeable result on this critical legislation.

S. 2305, the Veterans Law Judge Act of 1994, has six main features: It would change the title of members of the Board to "veterans law judge;" it

would provide Board members pay equity with administrative law judges; it would require the Secretary to establish standards for reappointment of Board members; it would permit members to serve after expiration of their terms with the approval of the Secretary; it would require notice and the opportunity for a hearing if a member was not to be reappointed; and it would grant a member who was not reappointed the right to a position as an attorney-adviser at the Board.

We want to salute Senator Akaka for his perseverance in championing the cause of pay equity for members of the Board. His determination to pursue this initiative has taken us, I believe, to a point where a good idea is about to become a reality.

Pay Comparability

The Department supports section 3 of S. 2305, which would provide Board members pay comparability with administrative law judges. We believe that enactment of this provision—which is consistent with title III of H.R. 4088 as reported by the House Veterans' Affairs Committee—will help stem the tide of Board members leaving VA for ALJ positions. We note that this provision in the House measure had the unanimous support of the veterans service organizations.

Under current law, members of the Board of Veterans' Appeals—with the exception of the Chairman, Vice Chairman and Deputy Vice Chairman—are compensated at level 15 of the General Schedule. For fiscal year 1994, the pay range for GS-15 is approximately $69,400 to $90,300. The pay for Administrative Law Judges currently ranges from approximately $78,400 to $108,500 for most judges, with some supervisory judges receiving as much as $120,600.

As Chairman Montgomery said during the debate on the Veterans' Judicial Review Act (VJRA) in 1988, the job of a Board member is important and requires extensive training which only Board members and senior attorneys employed to advise the Board possess. It has been our experience that it generally takes from seven to ten years in the area of veterans' law before an attorney has the necessary experience to serve as a Board member. It is only by reliance on such expertise that the Board can expect to decide cases in an expeditious manner with the requisite quality to meet the scrutiny of judicial review.

Nor has judicial review lessened the importance of the individual Board member. In the four years since the Court of Veterans Appeals began deciding cases, less than 10% of appealable Board decisions have been taken to the Court. Thus, for the vast majority of veterans and their families, the Board is the court of last resort.

VA cannot afford to lose this experience. But Board members are being lost to the ranks of Administrative Law Judges and the main reason is clear: pay.

The duties of the position and the complexity of the work performed by Board members are essentially the same, if not more complex, than those performed by Social Security administrative law judges. When VJRA was signed in 1988, the similarity of these positions was reflected by the classification by the Office of Personnel Management of both positions, with few exceptions, at the GS-15 level.

In 1990, the playing field changed. Congress passed the "Federal Employees Pay Comparability Act," raising the pay of ALJ's to its present level—from thirteen to twenty percent above the GS-15 level. At the same time, Social Security began looking for more administrative law judges to handle appeals involving disability claims. Board members, with their extensive knowledge of and experience in both medicine and law, were natural candidates.

The result was predictable.

Since July 1993, the Board has lost nine of its most experienced members and one senior attorney to the ALJ ranks. Of the 46 attorney Board members, eleven are on the ALJ register maintained by the Office of Personnel Management and are eligible to receive offers at any time. Five more have submitted applications, and it is our understanding that another ten are in the process of completing applications.

Veterans and their families cannot afford to lose this experience.

We believe, Mr. Chairman, that making the pay of Board members equal to that of ALJ's will preserve the experience that the Department needs and that veterans and their families deserve.

The costs related to the initiative are not reflected in VA's 1995 budget. We believe, however, that this initiative is now a priority that will need to take precedent over other, lower priority activities. To that end, we will identify items in the GOE budget that will be reduced if this bill is enacted. We assure the Committee that this reduction will not be taken in any area that would affect the delivery of veterans benefits.

Performance Standards; Notice and Opportunity for a Hearing

Under S. 2305, the nine-year terms of Board members would be preserved. However, unlike present law, section 4(c) of the bill would require the Secretary to establish fair and objective criteria for reappointment. Further, section 4(b) of the bill would provide that, where the Chairman does not intend to recommend a member for reappointment, or the Secretary does not intend to reappoint a member, that member must be given notice of that intention, with an explanation, not later than 120 days before his or her term expires, and an opportunity for a hearing before the Secretary not later than 60 days before the expiration of the term. Failure to abide by these guidelines results in reappointment, unless the President disapproves.

The Department supports the establishment of performance standards for the reappointment (or recertification, as proposed in title III of H.R. 4088) of Board members. It is our belief that members must be accountable. The new single-member environment made possible by Public Law 103–271 is an important step toward that goal. We think that fair and objective criteria can be established which will take us to that goal.

Under current law, Board members are appointed for 9-year terms. While each may be appointed to a successive term, there are currently no standards for determining whether to make such a reappointment. This uncertainty about future employment is not in the best interests of Board members or of the veterans they serve. This uncertainty also has been a factor in the departure of Board members to ALJ positions, which have no term limits. The Department believes that members are entitled to clear standards for continued employment.

Similarly, we support the concept of notice and the opportunity for a hearing in the case of non-reappointment. We believe that members are entitled to this level of due process.

Extension of Appointment

Section 4(b) of S. 2305 would provide that a member (other than the Chairman) whose term expires may, upon the recommendation of the Chairman and the approval of the Secretary, continue to serve as a member until reappointed to an additional term or until a successor is appointed. The Department supports this provision in order to promote continuity at the Board. As a technical matter, we suggest that the language be clarified to indicate that the "trigger" for the end of the extension is *approval,* not appointment, since the process is not complete until the President approves the appointment.

Section 4(a) of the bill would provide a similar extension for the Chairman, conditioning the extension on approval of the Secretary.

VA supports this provision.

Reversion

Section 4(b) of S. 2305 would also provide that a member who was a career or career-conditional employee in the service prior to appointment as a Board member shall, upon the expiration of the member's term, revert to the civil service grade and series held immediately prior to appointment. We think this is a fair way to deal with career employees who are not reappointed.

SES Protection

The Board's Vice Chairman and Deputy Vice Chairmen have historically held positions in the Senior Executive Service (SES). Section 5 of the bill would permit individuals in those positions to continue as members of the SES, and would ensure they continue to receive the pay, leave and other benefits to which SES members are entitled.

Because it is fair to occupants of those positions, the Department supports this provision.

S. 2331

Mr. Chairman, I next turn to your bill which would permanently provide legal authority for the Department to take necessary actions regarding to two personnel matters, and extend our authority to enter into enhanced use leases. All three statutory authorities will expire in 1994 absent Congressional action.

Section 1 would make permanent the Department's authority for waiver of reduction of military retirement pay for registered nurse positions. Since VA can seek authority for this waiver from the Office of Personnel Management under existing law, we believe making this authority permanent is unnecessary.

Section 7432(d) of title 38, United States Code, requires the Secretary to approve any physician or dentist special pay agreement that would provide total annual pay exceeding the amount for a person in Executive Level, grade I. The Secretary may disapprove the agreement if it is determined that the amount of special pay is not necessary to recruit or retain the physician or dentist. The requirements of section 7432(d) will not apply to agreements entered into after September 30, 1994. These provisions provide a prudent mechanism for review

of special pay agreements for the affected positions and employees. Because there is a continuing need to assure that Federal salaries are appropriate and justified, particularly those at higher levels, we urge enactment of this proposal which would permanently authorize the Secretary to approve such special pay agreements. In order to assure that the Secretary has the flexibility to delegate special pay decisions under 38 U.S.C. § 7432(d) should he wish to do so, we further recommend that the phrase "...through the Under Secretary for Health" be deleted from the first sentence.

Subchapter V of chapter 81 of title 38, United States Code, authorizes the Secretary to enter into enhanced-use leases of VA real property and in return obtain goods or services with little or no expenditure of appropriated funds. The authority, for example, has been very useful to the Department in establishing child care centers. We also anticipate that it will be useful for our functioning in a reformed health care system. Accordingly, we support continuation of the authority.

S. 2320

The "Philippine Veterans Currency Act of 1994" would amend title 38, United States Code, to eliminate the requirement that veterans of the Philippine Commonwealth Army, including members of recognized guerrilla units, and the New Philippine Scouts, and their dependents and survivors, be paid certain VA benefits in pesos. This bill would not affect the rate at which payment is made to these beneficiaries; it would only eliminate the restriction on the currency in which payment is made. VA supports this legislation.

Section 107(a) and (b) of title 38, United States Code, provides that the payment to Philippine Commonwealth Army veterans, including members of recognized guerrilla units, and veterans of the New Philippine Scouts of certain VA benefits "shall be made at a rate in pesos as is equivalent to $0.50 for each dollar authorized." Similarly, under section 3565(b)(1) of title 38, the educational assistance allowance authorized by 38 U.S.C. § 3532 and the special training allowance authorized by 38 U.S.C. § 3542 for children of Commonwealth Army veterans and veterans of the New Philippine Scouts must be paid in Philippine pesos. In addition, if a person receiving an educational assistance allowance utilizes the benefit in pursuing a program of education at an institution located in the Philippines, 38 U.S.C. § 3532(d) requires that the educational assistance allowance be paid in Philippine pesos.

For approximately the past 20 years, these statutory provisions requiring payment to be made in pesos have been implemented by the use of a procedure called "lipsticking" of checks. Current United States Treasury Circular provides that, to assist the Philippine government in implementing its foreign-exchange regulations, checks drawn on the United States Treasury in dollars for delivery to certain Philippine citizens in the Philippines are to be "lipsticked," *i.e.*, overprinted in red ink with a restrictive legend by the United States Treasury's Austin Regional Finance Center in Texas. This legend reads: "Payable only in pesos through authorized agent banks of the Central Bank of the Philippines and Postal Offices."

In 1992, the Department of State requested that the Department of the Treasury no longer "lipstick" checks issued to Philippine citizens. According to a letter from the American Embassy in Manila, the State Department

believes that lipsticking is no longer necessary on dollar checks issued to Philippine citizens in the Philippines because of Philippine Central Bank Circular No. 1318, which liberalizes Philippine foreign-exchange control measures. VA, however, was unable to agree to elimination of lipsticking of veterans-benefit checks. The VA General Counsel concluded, in O.G.C. Advis. 36-92, that the title 38 provisions calling for payment in pesos do not permit elimination of the restrictive endorsement on checks issued in United States dollars to beneficiaries who are veterans of the Commonwealth Army or the New Philippine Scouts, and their dependents and survivors, who reside in the Philippines. We understand that lipsticking of other Treasury checks issued to Filipinos has been discontinued and that the only checks which are currently lipsticked by the Department of the Treasury are those issued to certain Philippine veterans and their dependents and survivors who reside in the Philippines and who are entitled to certain veterans' benefits. This legislation would remove the impediment to eliminating the restrictive endorsement on these checks.

It appears that the rationale for requiring payment of veterans' benefits in pesos to certain Philippine veterans no longer exists. Congress apparently imposed this restriction in 1946 in keeping with the policy of the government of the Philippine to maintain the stability of the Philippine currency. However, we have been informed that neither the Central Bank of the Philippines, nor the Philippine Department of Foreign Affairs, objects to the discontinuation of lipsticking. Rather, the effect of the restrictive endorsement on Treasury checks has seemingly been nullified by a September 8, 1992, circular letter issued by the Central Bank of the Philippines which provides that, effective October 1, 1992, United States Treasury checks, whether or not they are lipsticked, may be cashed in foreign exchange or converted into pesos at the option of the payee. The circular letter states that this policy is consistent with Central Bank Circular No. 1353, dated August 24, 1992, which liberalized Philippine foreign exchange regulations. In light of the foregoing, we see no reason to continue the requirement that payments to certain Philippine veterans be made in pesos.

This proposal would result in no additional benefit costs and would result in insignificant administrative cost savings.

S. 2322

We support S. 2322. Section 2303(a)(1) of title 38, United States Code, grants VA authority to pay the actual cost, not to exceed $300, to bury a nonservice-connected veteran who dies in a VA facility. Section 1 of this bill would amend section 2303(a)(1) by raising the upper payment limit for a contract burial to $600 in the case of a non-service connected veteran. This increase in VA's authority would apply only to contracts for burial services of nonservice-connected veterans whose bodies are not claimed by family or friends. We fully support this provision.

Funeral expenses have increased significantly since 1978, when the amount authorized for a contract burial was increased from $250 to $300. VA has found it increasingly more difficult, in most areas of the country, to find mortuaries willing to provide traditional funeral and burial services for a price they claim fails to cover their expenses. By raising the maximum payment limit to $600, the bill would provide VA with needed purchasing power when contracting for a burial in these cases.

Section 2 of the bill would change the statutory due date for reports and recommendations concerning VA operating bed levels and distribution required by section 8110(a)(3)(B) of title 38, United States Code, from December 1 to April 1. We fully support this provision.

Experience has demonstrated that VA cannot gather meaningful data in time to provide the Congress with useful information by December of each year. To meet the report deadline, VA must use incomplete preliminary fiscal year data. Final fiscal year data is generally not available until mid-December. The time required for analysis of the data and development of a report to Congress can also be lengthy. Changing the due date for this report to April 1 of the following year would permit VA to furnish the Congress with useful and valid information based on data that has undergone the sort of thorough scrutiny necessary for the Secretary to make meaningful recommendations.

If this measure is enacted, we estimate the related annual costs to be approximately $225,000, which is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990, and must be offset by equivalent savings in order to avoid a sequestration of funds.

S. 2321

S. 2321 would clarify the eligibility of veterans' spouses for burial in national cemeteries.

As originally enacted in the National Cemeteries Act of 1973, section 1002(5) (now section 2402(5)) of title 38, United States Code, governing eligibility for national cemetery burial, authorized interment of the husbands, wives, surviving spouses, and minor children of individuals eligible for national-cemetery burial based on their military service. The Veterans' Benefits Improvement and Health Care Authorization Act of 1986 made a technical amendment to 38 U.S.C. § 1002(5) (now §2402(5)) making that provision gender neutral by deleting reference to the "wife" or "husband" of the eligible individual. As a result, section 2402(5) now refers only to the "surviving spouse," not the spouse, of the eligible person. By providing eligibility for only the "surviving" spouse, this change had the unintended effect of deleting statutory provision for National Cemetery burial of a veteran's spouse who predeceases the veteran.

VA regulations at 38 C.F.R. § 1.620(f) continue to provide eligibility for a spouse who predeceases an eligible individual. The bill would restore the reference in the statute to eligibility for the spouse who predeceases the eligible individual.

Because enactment of our proposal would effect only a technical clarification of the law as currently being applied, VA estimates there would be no associated administrative or benefit costs.

S. 2324

S. 2324 would add a new section, 7427, to title 38, United States Code, to provide to title 38 employees

(VA medical professionals such as physicians, dentists and nurses) the same protections against prohibited personnel practices, including protection against reprisal for whistleblowing, that apply to other Federal employees.

83-528 O - 94 - 3

Proposed section 7427(a) would apply title 5 provisions protecting Federal employees against prohibited personnel practices to title 38 employees. These protections would include the Office of Special Counsel's investigative, corrective action and disciplinary authorities, the reduced burden of proof needed to establish whistleblower reprisal, and the right to seek review of whistleblowing claims by the Merit Systems Protection Board.

Proposed section 7427(b) would provide that the Office of Special Counsel and the Merit Systems Protection Board review of allegations of prohibited personnel practices involving title 38 employees is limited to title 5 grounds.

VA supports this bill, which would place title 38 employees on an equal footing with their title 5 counterparts with respect to these important protections. VA believes that the addition of these protections would significantly improve VA's title 38 personnel system.

Congress originally enacted the protections against prohibited personnel practices as part of the Civil Service Reform Act. Congress strengthened these protections when it enacted the Whistleblower Protection Act (WPA). The WPA authorized Federal employees to seek review of whistleblower claims by the Merit Systems Protection Board (MSPB). VA has always viewed these protections as applying to VA's separate personnel system for medical professionals. The MSPB, however, ruled in *Alvarez v. VA*, 49 M.S.P.R. 682 (1991), that title 38 medical professionals could not seek MSPB review of their whistleblowing claims because they were limited to the review mechanisms of the title 38 personnel system.

In strengthening whistleblower protections, the WPA changed the burden of proof to make it easier for whistle-blowers to establish their claims. Moreover, even though title 38 whistleblowers may raise their claims under the title 38 personnel system, the revised easier burden of proof under the WPA would not apply. In this regard, the House Committee on Government Operations reported that protections for title 38 whistleblowers are inadequate in the absence of WPA protections, and recommended remedial legislation.

This proposal would confirm that prohibited personnel practices protections, including protection against whistleblower reprisal, apply to title 38 employees to the same extent as they apply to other Federal employees. The proposal additionally would confirm that the expanded protections of WPA apply to VA medical professionals, including the right to independent investigation of reprisal claims by the Office of Special Counsel and review by MSPB.

There are no costs associated with this proposal.

S. 2323

The Department of Veterans Affairs supports S. 2323. We believe that enactment of this bill is essential to the continued viability of the medical quality assurance program at VA medical facilities.

S. 2323 amends section 5705 of title 38, United States Code, which provides for the confidentiality of specified medical quality assurance program records of the VA. Protection of the discussions, deliberations and other peer review activities of health care practitioners is widely accepted in the medical community as necessary to obtain the full and frank evaluation of the quality of care provided by health care practitioners by their peers. The enactment of

section 5705 simply provided VA medical facilities with the same coverage available to the private sector because, to the extent we have been able to determine, almost every state had enacted legislation protecting records generated in the course of quality assurance peer review activities. In 1986 Congress enacted 10 U.S.C. § 1102, which was patterned after section 5705, to provide the same confidentiality to DOD medical quality assurance peer review program records. However, section 1102 clarified certain matter which arose in the implementation of the VA provision.

Since 1980 when section 5705 was enacted, the nature of quality assurance activities conducted by all health care facilities, including VA medical centers, and the uses of data and information generated by those activities have evolved and grown more sophisticated. Many of these changes in quality assurance activities are the result of directives issued by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO) which are used by JCAHO to accredit all medical facilities, including VA health care facilities.

The purpose of these proposed amendments to section 5705 is to align the coverage of section 5705 with this evolution while preserving the existing confidentiality of the records and activities essential to the success of VA's quality assurance program. These activities are vital to improving medical care for VA beneficiaries.

Several of the amendments are derived from language in the DOD statute. Section 5705 plainly states that medical quality assurance records protected by it are privileged and confidential and cannot be disclosed outside VA except as expressly authorized by section 5705. Despite this apparently clear bar against disclosure, parties repeatedly seek access to these records or testimony of individuals who participated in the activity which created the records, often by means of litigation.

To address this problem, the DOD statute, section 1102, goes into more detail than section 5705, expressly barring release of records in judicial or administrative proceedings and barring testimony about the activities reflected in, or contents of, the records. Incorporation of the section 1102 language into section 5705 would make clear that the general bar of section 5705 applies to these commonly occurring situations.

Similarly, section 5705-covered records are protected from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. §552, as are records protected by section 1102. However, section 1102 specifically bars release of medical quality assurance records under FOIA. The proposed amendment would incorporate this language from section 1102 into section 5705.

Further, the incorporation of language similar to the language in subsection 1102(e) in section 5705 would make it clear that any individual who has access to the records may disclose or redisclose section 5705-protected records only as authorized in section 5705.

Section 1102 also authorizes the disclosure of medical quality assurance records in certain situations in which VA currently may not release its similar section 5705-protected medical quality assurance records. These section 1102 disclosure authorities are more consistent with the uses now made of quality assurance data by medical facilities generally. For example, JCAHO now requires medical facilities to use quality assurance information in deciding whether to grant, renew, limit or revoke the clinical privileges of health care

practitioners. Similarly, a protected quality assurance investigation may reveal that disciplinary or other adverse personnel action is necessary against a health care professional for his or her activities or conduct in the matter investigated in the quality assurance process. Use of this type of information for these purposes necessarily requires disclosure of that information in administrative and judicial proceedings. Such disclosures currently are barred by section 5705.

As a result, in both situations, VA must recompile the information first created as part of a protected quality assurance activity in order to be able to use it and release it as required in the course of either making or defending a privileging decision or a disciplinary or other adverse personnel action. This is unnecessarily burdensome for VA.

Where section 5705 authorizes disclosure of records, it requires the deletion of individually identified information before disclosure of the records outside VA if the disclosure would constitute a clearly unwarranted invasion of the personal privacy of VA patients and employees as well as participants in the quality assurance activity. Section 1102 simply requires deletion of the identifying information. The proposed amendment adopts the section 1102 redaction procedure.

Currently, the Department does not file or retrieve individually identified section 5705 medical quality assurance records by the name of any individual. The rationale is that such records would also be subject to the Privacy Act, 5 U.S.C. § 552a, and the disclosure authorities of the two statutes are not identical; the Privacy Act permits, and in some instances, section 5705 requires, disclosure of records in situations not authorized by the other. Yet, VA is facing an increasing need to file these records by the name or other individual identifier of health care practitioners in order to be able to effectively use the records in the privileging process as JCAHO requires. The proposed amendment resolves this conflict between the two statutes' disclosure provisions by providing that section 5705 records retrieved by an individual's name may be disclosed only when both statutes authorize the disclosure.

The legislation also addresses an individual health care provider's access to, and amendment of, his or her individually identified and retrieved section 5705 records. The individual would have a right of access to the records without information identifying other quality assurance review activity participants who had reviewed the clinical actions of the individual. And under S. 2323, while a health care professional could not seek to amend records covered by section 5705, the individual could seek redress on any personnel matter arising from a disputed entry as provided in the Civil Service Reform Act or analogous procedures governing Title 38, United States Code, employees.

S. 2365

This bill would require VA, in consultation with the Departments of Defense and Health and Human Services, to sponsor a study of the children and grandchildren of veterans exposed to radiation to determine if there are any effects on them resulting from the exposure. The study would also examine the relationship, if any, between such exposure and untoward pregnancy outcomes experienced by the spouses of veterans who were exposed. Specifically, the bill would require the Secretary to seek an agreement with the National Academy of Sciences for conduct of the study. If that cannot be done in a reasonable

time, the Secretary must seek such an agreement with another non-Federal, not-for-profit entity capable of conducting the study.

Under the bill, the proposed study would focus on four groups of veterans who were exposed to ionizing radiation. First are those who participated during active duty in an atmospheric nuclear test that included the detonation of a nuclear device. Second are those veterans who served in the Armed Forces with the U.S. occupation force of Hiroshima or Nagasaki, Japan before July 1, 1946. Third are those who were interred or detained as prisoners of war of Japan before July 1, 1946, in circumstances providing the opportunity for exposure compatible to that of an individual who served with such occupation force before that date. The fourth group would include any other veterans whom the Secretary designates.

Mr. Chairman, as I wrote to you a little over a month ago, I appreciate the concerns that have been raised about the possible effects of radiation exposure on the offspring of those who were exposed. At that time, we both agreed that it would be appropriate to convene a group of experts to review the science and make recommendations regarding the need for, and feasibility of conducting, a major epidemiological study such as that proposed. That continues to be my position. To that end, my staff has been exploring alternatives for obtaining such expert advice. One possibility is to have the question considered by the Veterans Advisory Committee on Environmental Hazards. That committee currently has as members two individuals who are renowned experts on the reproductive effects of exposure to radiation. Another alternative would be to have the questions reviewed by the Committee on Inter-Agency Radiation Research and Policy Coordination.

I intend to move quickly on this matter, and I will report to you as soon as decisions are made. Until we are able to obtain this preliminary review, however, we recommend that you defer action on S. 2365.

S. 2387

S. 2387 would make amendments to the Service Members Occupational Conversion and Training Act of 1992 (SMOCTA), enacted as subtitle G of Public Law 102–484, that are needed in several areas of concern to us as the implementing agency for this program. These amendments, which we note are similar in both language and effect to the provisions passed by the House in section 11 of H. R. 4768, would lift the 18-month limit on the duration of job training programs, while retaining the same reimbursement levels; assure parity of SMOCTA employee wages and benefits with individuals in similar job training programs in the community; and make other changes to clarify and improve program access and operations. While we support such legislation, we find the provisions of section 11 of H. R. 4768 preferable for their somewhat broader coverage of employer payment issues.

As mentioned, S. 2387 would eliminate the current prohibition against job training programs that are more than 18 months in duration. This change would streamline the approval of extended job training programs, enhance placement opportunities for veterans, and result in more thoroughly trained and higher skilled employees with no increase in SMOCTA assistance to employers.

The bill would promote program integrity by requiring that wages and benefits paid by employers to veterans receiving training under SMOCTA be

not less than those paid to other employees participating in similar training programs in the community for the entire period of the training. This amendment, though expressly applicable to SMOCTA programs beginning after the date of enactment of the measure, would send a clear message to all participating employers that they are expected to deal fairly with the veterans they employ and to provide equitable compensation for such employment to continue after the Government's subsidies to the employer end.

Another provision of S. 2387 would make it clear that, while the bill would permit the period of training under a SMOCTA job training program to exceed 18 months, in no event could SMOCTA payments to employers for such training exceed the amount payable for the number of hours equivalent to 18 months of that training. We welcome this clarification maintaining the payment limitation. In this regard, however, we prefer the language in section 11(b)(1)(B) of H. R. 4768 referring to "18 months (or the equivalent training hours)," which provides greater administrative flexibility to accommodate various job training program operations than does the Senate bill's reference solely to "hours equivalent to 18 months of training."

In further clarification of the limits on employer payments, the bill provides that an employer may be paid SMOCTA assistance for providing (nonconcurrently) more than one job training program for the same eligible individual, if the employer has not received on that person's behalf assistance exceeding an aggregate amount of $10,000 ($12,000, if that individual has a service-connected disability rated at 30 percent or more). Again, we acknowledge the need for this clarification but prefer the language of the House version (section 11(b)(1)(C) of H. R. 4768). The latter recognizes that the payment limitation must refer not merely to the aggregate amount *received* by the employer, as does the Senate bill, but also to amounts that may be due but not yet paid (e.g., amounts withheld for payment upon program completion). Thus, the House version would preclude the possibility that an employer who was due a final payment yielding $10,000 in total assistance for one program could enter the same veteran into a second program before receiving that final payment.

Further, the House version, unlike this Senate bill, contains an amendment to the requirement for withholding a portion of the payments due the employer. Under current law, 25 percent of the payments due an employer are withheld until the veteran has remained employed 4 months beyond completion of the job training program, which may not exceed 18 months of training. Thus, payment of the withholding may be deferred up to 22 months. However, with elimination of the current 18-month maximum restriction on the period of job training, proposed by both the House and Senate bills, the period for deferring payment to the employer of withheld amounts necessarily would be extended, perhaps as much as several years for an employer providing an apprenticeship program. The House bill obviates this result by providing for payment of the withheld amount upon the veteran's continued employment for 4 months after completion of either the entire training program or 18 months of training, whichever first occurs. We find this amendment eminently reasonable. Otherwise, the length of delay in payment would vitiate effective use of the withholding as an incentive for the employer to retain the veteran in employment following the initial 18 months of SMOCTA subsidization, as well as impose an unreasonable administrative accounting burden. Thus, we prefer and support enactment of H. R. 4768.

Finally, S. 2387 would permit an employer to hire an eligible person for an approved job training program on the same day the employer transmits a notice of hiring to the SMOCTA implementing official. However, SMOCTA training assistance still would not be provided for the employer if, within 2 weeks after the date on which the notice is transmitted, the official disapproves the eligible person's entry into that job training program for lack of available funding.

Under current law, an eligible person would not be able to begin a program of job training until 2 weeks after the notice advising the implementing official of the employer's intent to hire the person had been transmitted. The criticism and reality of operating with this restriction, however, is that an employer having a job opening and a desirable candidate for the position wants to fill the job immediately, not wait 2 weeks. This may result in the hiring of a qualified veteran by an employer who, not comprehending the statutory requirements and feeling misled about being reimbursed for training already provided, decides to terminate the employee. It otherwise may result in selection of an individual other than the available SMOCTA veteran in the first place when an employer is not willing to forbear hiring for a position during the period of program approval and the subsequent 2-week notice period for determining funding availability. The amendment under this bill would strike an appropriate balance, permitting timely hiring with SMOCTA reimbursement to the employer retroactive to the date of hire, yet placing the burden of risk on the employer as to the availability of adequate program funding.

S. 1927

Compensation COLA

Sections 101 through 106 of S. 1927, as passed by the House on August 8, 1994, would provide, effective December 1, 1994, a cost-of-living adjustment in the rates of disability compensation, dependency and indemnity compensation, and clothing allowance payable for service connected disability or death. The amount of the adjustment would be a 3-percent increase rounded down to the nearest dollar. We estimate that enactment of these provisions would result in savings of $20 million in fiscal year 1995 and $116 million in the five-year period from fiscal year 1995 through 1999.

VA strongly supports a cost-of-living adjustment to protect disability compensation and dependency and indemnity compensation against inflation, just as veterans' pension and Social Security benefits are protected under current law. We do not, however, favor rounding down the rates of compensation and dependency and indemnity compensation to the nearest dollar. Such rounding would weaken the protection afforded by the adjustment. We prefer the adjustment recommended in the President's budget, which proposes an across-the-board increase in disability compensation and dependency and indemnity compensation in the same percentage as in the cost-of-living adjustment that will be provided under current law to veterans' pension and Social Security recipients. This rate of increase is currently estimated to be 3 percent. Under the President's budget, amounts of $0.50 or more would be rounded up to the nearest dollar, and amounts less than $0.50 would be rounded down to the nearest dollar.

Agent Orange Presumptions

Section 201 of S. 1927 would add four more diseases—Hodgkin's disease, porphyria cutanea tarda, respiratory cancers (cancers of the lung, bronchus, larynx, or trachea), and multiple myeloma—to the statutory list of diseases for which service connection is presumed for Vietnam-Era veterans who were exposed to herbicides while serving in Vietnam.

Pursuant to authority granted in the Agent Orange Act of 1991, Public Law 102–4, VA has already amended its regulations to provide for presumptive service connection based on herbicide exposure for Hodgkin's disease, porphyria cutanea tarda, cancers of the lung, bronchus, larynx, or trachea and multiple myeloma. Section 201 of S. 1927 would merely codify into statute what VA has already accomplished through the regulatory process. Such legislation is neither necessary nor practical. The desire to assure that what has been given to veterans is not taken away is laudatory. However, VA does not foresee changing, without significant new scientific evidence, its regulations to delete a condition already determined to be associated with herbicide exposure. Furthermore, we believe that, where VA is authorized to act and is acting, the regulatory process is preferable to legislation because it allows greater flexibility for drafting the final language and for making changes where, for example, new scientific evidence becomes available. Therefore, while we fully support creation of appropriate presumptions of service connection based on herbicide exposure, we oppose legislative expansion of these benefits as being unnecessary legislative ratification of regulations.

Board of Veterans' Appeals

Mr. Chairman, title III of S. 1927 bears strong similarities to S. 2305. Like S. 2305, this measure would provide Board members pay equity with administrative law judges and establish job performance standards for members; unlike S. 2305, S. 1927 would eliminate the current nine-year terms of Board members, requiring instead a "recertification" of each Board member at least once every three years. In a manner similar to S. 2305's treatment of non-reappointed members, S. 1927 would provide a "safety net" for Board members who are not recertified. Finally, like S. 2305, S. 1927 would protect Board members who are also members of the Senior Executive Service.

Pay Comparability

For the same reasons we support the pay comparability provision of S. 2305, we support the substantively identical provision in section 301 of S. 1927.

Terms, Performance Standards, and Recertification

Section 301 of S. 1927 would eliminate the nine-year terms of Board members. At the same time, however, Board members other than the Chairman and members of the Senior Executive Service would be subject to recertification every three years based on "objective and fair" performance standards to be established by the Chairman, subject to the approval of the Secretary, within 90 days of enactment. Under procedures modeled on those applicable to members of the Senior Executive Service (5 U.S.C. § 3393a), section 301 of S. 1927 would require the Chairman to evaluate each member at least once every three years. If a member's performance met the performance standards established, the member would be recertified. If it did not, the Chairman would

either conditionally recertify the member or recommend to the Secretary that the member not be recertified.

Conditional recertification would require another review by the Chairman within one year. Failure to meet performance standards then would require a recommendation to the Secretary that the member not be recertified. A recommendation for noncertification would require the convening of a panel composed of VA (but not Board) and other Federal employees who would recommend to the Secretary either that the member be conditionally recertified or noncertified. Should the Secretary noncertify the member, the member would have the right to be employed by the Board in an attorney-adviser position.

As discussed in our comments on S. 2305, we support the establishment of performance standards for Board members.

SES Protection

The Board's Vice Chairman and Deputy Vice Chairmen have historically held positions in the Senior Executive Service (SES). The Chairman and other Board members who are members of the SES would not be subject to the performance evaluation section 301 of S. 1927 would provide. Section 301(b) would also preserve the rates of pay of any Board member. We strongly support these provisions because they are fair to occupants of those positions.

Veterans Benefits Administration Reorganization Study

Section 402 of S. 1927 would require the Secretary to report to the Senate and House Veterans' Affairs Committees, within 180 days of enactment, on the feasibility and impact of a reorganization of the adjudication divisions within the regional offices of the Veterans Benefits Administration to a number of such divisions that would improve the efficiency of claims processing.

The supreme priority of VA is to act in the best interest of our nation's veterans. Any reorganization of adjudication divisions would have to advance this objective. Access by veterans and their representatives to claims adjudicators is critical and cannot be compromised. We cannot ignore, however, the growing complexity of our programs. The study mandated by this section may be a useful starting point to build a consensus and to protect the best interests of our veterans. Therefore, we favor this provision.

Master Veteran Record

Section 403 of S. 1927 would require the Secretary to implement, within two years of enactment, a recordkeeping system whereby each veteran and other person eligible for VA benefits shall be identified by a single number and through which information relating to that person, including that person's current eligibility or entitlement status, shall be available electronically to VA employees in each regional office or medical center.

VA is currently developing a strategy to implement a comprehensive Master Veteran Record for the Department. We do appreciate the Committee's interest in this topic, but feel that such a legislative amendment is unnecessary. However, we will be happy to keep the Committee fully informed of all the activities regarding this important initiative.

Report on Pilot Programs

Section 404 of S. 1927 would require the Secretary to report to the Senate and House Veterans' Affairs Committees, within 180 days of enactment, a description of each pilot program and major initiative being tested in the regional offices that affect the adjudication of VA benefits claims. The report would have to include the Secretary's recommendations regarding any need for legislation to implement any pilot program recommended by the Secretary. If legislation is not required for implementation of any pilot program, then the Secretary shall advise whether any such pilot program shall be implemented and provide a timetable for such implementation.

These programs and initiatives represent our hope for the future. The teamwork that has emerged from the recent Blue Ribbon Panel enhances these programs and initiatives. We are excited and hopeful about them as we prepare to move into the next century and look forward to sharing reports of our success with Congress.

Acceptance of Claimant's Written Statement

Section 405(a) of S. 1927 would require the Secretary to accept a claimant's written statement as proof of the existence or dissolution of a marriage, the birth of a child, or the death of any family member. It would permit the Secretary to require documentation in support of the claimant's statement only if either the claimant does not reside within a state, or "the statement on its face raises a question as to its validity."

We oppose the enactment of section 405(a) because it requires the Secretary to accept claimants' written statements as proof rather than giving the Secretary the discretion to so accept them. Section 2 of S. 1905, 103d Cong., as introduced, imposed the same requirement. However, after hearing VA testimony objecting to the provision, this committee amended its language, now section 2 of S. 1908, 103d Cong., as reported, to require the Secretary to accept not a claimant's statement but a photocopy of an appropriate document as proof of those relationships. This was done in the belief that such a measure is sufficient to relieve claimants of the burden of providing certified copies of these documents in order to expedite decision making. We also believe that this approach would alleviate the delay in decision making caused by VA's current evidence requirements. In fact, we have recently published an interim-final rule to allow acceptance of uncertified copies of the official documents necessary to establish marriage, annulment, birth, a child's relationship, or death.

We also oppose section 405(a) of S. 1927 because its grounds for permitting the Secretary to require supporting documentation are too narrow. There may be reasons other than something on the face of the statement to question its validity, such as previous statements or documentation contrary to the statement in question. The House Committee on Veterans' Affairs recognized this and acknowledged it in its report on H.R. 4088, where it said that that committee "would also intend that, if the statement conflicts with previous statements of the claimant, or if conflicting information is contained in the claimant's record, the Secretary could require documentation in support of the statements." Section 405(a) as drafted, however, could prevent the Secretary from reconciling such contradictory evidence.

Acceptance of Private Physician's Examination Report

Section 405(b) of S. 1927 would require VA, for purposes of disability compensation and pension claims, to accept a private physician's medical examination report, without corroboration by a VA examination, if it "is sufficiently complete to be adequate for disability rating purposes." Section 3 of S. 1905, 103d Cong., as introduced, also required the acceptance of private physicians' medical examination reports. Again, however, after hearing VA concerns about the provision, this committee amended its language to *allow* private physicians' reports to be accepted without VA corroboration if the reports contain sufficient clinical data to support the diagnosis of a disability or to provide a reliable basis for an evaluation of the degree of a disability. This committee reasoned that, while the authority to use private physicians' medical reports would be extremely valuable, VA should retain the discretion to require a VA examination.

For the same reason, we object to section 405(b) as passed by the House. VA adjudications should not always be controlled by private physicians' reports, which could be diametrically contrary to other evidence on file (including reports of more comprehensive examinations by VA or others). We believe VA must retain the ability to reconcile conflicting evidence of record by various means, including additional special examinations and requests for review by independent medical experts. Nevertheless, we appreciate the value in being permitted to accept private physicians' reports. In fact, we have already published a proposed rule change to allow acceptance of private physicians' statements in certain kinds of claims where degree of disability is at issue. However, this rule provides that qualifying statements may be accepted, but does not require that they be accepted in all cases. To qualify for acceptance, a private physician's statement must include clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests, and otherwise be adequate for rating purposes.

We also object to completeness being the sole qualification in section 405(b) a private physician's report must satisfy to be accepted by VA. Incompleteness of a report is not the only problem we need to avoid. A report may be complete, but be internally contradictory (e.g., reported laboratory findings might not support the diagnosis) or so at odds with other evidence as to be inherently questionable. We find the qualifications in the corresponding Senate measure more useful. Moreover, we believe the language in the House-passed bill may belie what is actually intended. The House Committee on Veterans' Affairs indicated in its report on H.R. 4088 that it intends the Secretary to have considerable latitude in determining the question of adequacy for rating purposes and that it intends such determinations to include, at a minimum, consideration of the extent to which a report contains clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests.

Remands

Section 406 would require the Secretary to provide for expeditious treatment by the Board and regional offices of any claim that has been remanded by the Board or by the Court of Veterans Appeals.

VA now does everything it can to decide all claims as quickly as possible without sacrificing quality or due process. For example, the Board considers appeals in the order of their docket numbers, and because remanded cases retain their original docket numbers, the Board considers them before later-docketed appeals. Because VA is already committed to handling all claims as expeditiously as possible, this provision would have little substantive effect. Again, while we appreciate this provision's intent, we feel that this legislation is unnecessary.

Board of Veterans' Appeals Screening of Cases

Section 407 would permit the Board to screen cases to determine the adequacy of the record for decisional purposes or to develop or attempt to develop the record for decisional purposes. This provision is consistent with a recommendation of the Select Panel on Productivity Improvement for the Board of Veterans' Appeals.

We support enactment of this provision. Permitting the Board to screen cases for these purposes would save Board members time. It would allow obvious deficiencies in a record to be rectified before a Board member fully reviewed the record to decide the appeal.

Clear and Unmistakable Error

Section 408(a) of S. 1927 would subject decisions of an agency of original jurisdiction to revision on the grounds of clear and unmistakable error. The evidentiary establishment of such error would require revision or reversal of the decision. Reversal or revision of a prior decision on these grounds would have the effect as if the reversal or revision had been made on the date of the original erroneous decision. Section 408(a) would permit the Secretary to institute review of a decision for clear and unmistakable error on his or her own motion or upon request of a claimant. A request for such review could be made at any time after the original decision is made and would be decided the same as any other claim.

Section 408(a) would provide in law what VA already provides in its regulations and claims-adjudication process. Currently, an allegation of error in a decision requires a review of that decision for correctness. Under the provisions of 38 C.F.R. § 3.105(a), a finding of clear and unmistakable error requires reversal or amendment of the erroneous decision. A corrected decision is effective as if the previous, incorrect decision had never been made. The time during which clear and unmistakable error may be alleged is not restricted. Such allegations are treated as other claims, even to the extent that the United States Court of Veterans Appeals has held that, "[o]nce there is a final decision on the issue of 'clear and unmistakable error' because the [agency of original jurisdiction] decision was not timely appealed, or because a [Board] decision not to revise or amend was not appealed to [the] Court, or because [the] Court has rendered a decision on the issue in that particular case, that particular claim of 'clear and unmistakable error' may not be raised again." *Russell v. Principi*, 3 Vet. App. 310, 315 (1992). Although we have no particular objections to the provisions of section 408(a), we believe that existing law and regulations already afford the same protections so that the additional legislation is unnecessary.

Section 408(b) of S. 1927 would subject Board decisions to revision on the grounds of clear and unmistakable error. It would authorize claimants to request

a review to determine the existence of clear and unmistakable error in a Board decision at any time after the decision is made. Under section 408(c), those provisions would apply to all Board decisions, and any Board decision on a claim of clear and unmistakable error that was filed after or was pending before VA, the Court of Veterans Appeals, the Court of Appeals for the Federal Circuit, or the Supreme Court on the date of enactment of S. 1927 would be subject to review by the Court of Veterans Appeals.

In the interests of the finality of administrative appellate decisions, VA opposes the provisions of section 408(b) and (c). The Board already has the authority, under current 38 U.S.C. § 7103(c), to correct an obvious error in the record, and the Chairman has the authority, under 38 U.S.C. § 7103(a), to order reconsideration of a prior Board decision. Under current regulations, the Chairman may order reconsideration on the Board's own motion or on an appellant's motion upon an allegation of obvious error of fact or law. (The U.S. Court of Appeals for the Federal Circuit recently confirmed that reconsideration—with a standard of review substantively identical to that of clear and unmistakable error—is the proper and logical approach to challenge otherwise final Board decisions, as it overruled the Court of Veterans Appeals in *Smith v. Brown*, No. 93-7043, slip op. at 24-26 (Fed. Cir. Aug. 12, 1994)). At a time when the Board is struggling to achieve acceptable response times in working its already heavy caseload, enactment of this provision could require it to review, on demand, literally hundreds of thousands of its past decisions, including those entered decades ago. Its enactment would come at the worst possible time, and its adverse impact on decisional timeliness could more than offset any gains that may flow from enactment of Public Law 103–271, which authorized single-member Board decisions.

Section 408(c) would in effect rescind the limitation, in section 402 of the Veterans' Judicial Review Act, on which Board decisions are subject to review by the Court of Veterans Appeals. By subjecting to Court review any Board decision on a claim of clear and unmistakable error in a prior Board decision, section 408(c) would also subject the prior Board decision to Court review, because the Court could not determine whether a prior Board decision involved clear and unmistakable error without examining that prior decision. Thus, the Court could review any Board decision, regardless of when the notice of disagreement was filed, which was reviewed on a claim of clear and unmistakable error. Such wide-ranging review would seem very much at odds with the carefully circumscribed review afforded under the original Veterans' Judicial Review Act.

Exposure to Radiation of non-U.S. Nuclear Weapons Tests

Section 501(a) would specify that onsite participation in a test involving the atmospheric detonation of a nuclear device constitutes a radiation-risk activity without regard to whether the nation conducting the test was the United States or another nation, effective May 1, 1988. Section 501(b) would clarify that direct evidence may be used to show service connection for diseases associated with exposure to ionizing radiation.

This is another legislative provision that is unnecessary because VA is amending its regulations to accomplish the same result.

Regional Office in the Philippines

Section 502 would extend until December 31, 1999, the Secretary's authority to maintain a regional office in the Republic of the Philippines. We support the extension of authority to maintain a regional office in the Philippines and have proposed such an extension to September 30, 1995. As a recent GAO report to the House Committee on Veterans' Affairs indicated, premature closure of the VA Manila regional office could hamper the detection of fraudulent activities resulting in increased program costs, increase personnel costs to obtain needed VA services in the United States, and decrease services to beneficiaries and claimants.

Renouncements

Under current 38 U.S.C. § 5306(b), new applications for pension, compensation, and dependency and indemnity compensation made after renouncement of the right to any such benefit must be treated as an original application, and payments may not be made for any period before the date a new application is filed. Section 503 of S. 1927, however, would exempt from that general rule applications for disability pension or parents' dependency and indemnity compensation filed within one year of renouncement of the benefit and allow payment of those benefits as if no renouncement had occurred.

A claimant receiving a need-based benefit, such as disability pension or parents' dependency and indemnity compensation, can renounce the right to receive the benefit in anticipation of receiving nonrecurring income, and then, following receipt of the income, reapply for the need-based benefit. Such a claimant, who renounces the right to receive the benefit and then reapplies within a year of the renouncement, can effectively avoid having the income, received during the interval between renouncement and reapplication, considered for income-computation purposes. This "loophole" is inconsistent with the provision of benefits based on need.

By providing that a new application for pension or parents' dependency and indemnity compensation filed within one year after renouncement shall not be treated as an original application and that benefits will be payable as if the renouncement had not been made, section 503 of S. 1927 would close this loophole in 38 U.S.C. § 5306. Section 503 would ensure that income received during the interval between renouncement and reapplication will be considered for income-computation purposes. We therefore support enactment of this provision, which would result in estimated savings of less than $500,000 for fiscal years 1995 through 1999.

Discontinuance of Compensation Upon Death

Section 504 would change the effective date for discontinuance of compensation based on the death of certain veterans. This section would apply to any veteran who was receiving compensation for a disability rated as total with an additional amount being paid for a spouse, if the Secretary determines that the surviving spouse is not entitled to dependency and indemnity compensation. The effective date for discontinuance of such compensation would be the last day of the month in which the veteran died. VA is currently estimating the cost of this provision. If enacted, the cost of this provison would be subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990, and must be offset by equivalent savings to avoid a sequestration of funds. This provision would apply to deaths occurring after

September 30, 1994.

Section 504 would, in effect, reinstate certain benefits for the month of a veteran's death which were withdrawn as a cost-saving component of a budget-reconciliation measure considered necessary in an earlier year. Furthermore, this provision would create an inequity by providing benefit advantages to surviving spouses but not to surviving children in cases where no spouse survives. VA cannot support this provision.

H.R. 4724

H.R. 4724 would make several amendments to the VA housing loan guaranty program. VA generally supports this bill, subject to concerns about cost under the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990.

Section 1 of the H.R. 4724 would modify the eligibility requirements for VA home loans to members of the Selected Reserve (including the National Guard). The section would grant loan benefits to Reservists who were discharged or released from the Reserves before completing 6 years of service because of a service-connected disability, and to the surviving spouses of Reservists who died from a service-connected cause incurred during reserve training. VA strongly favors these amendments if their costs are fully offset. Current law waives minimum service requirements for these benefits for veterans released from active duty for a service-connected disability. The law also grants loan entitlement to surviving spouses of veterans with qualifying active duty who died from a service-connected disability. Equity dictates that similar treatment be given to Reservists who are killed, injured, or die from an injury or illness incurred during their weekend drills or 2-week annual training. Our preliminary estimate indicates that VA would guarantee an additional 165 loans per fiscal year, with a 5-year cost of approximately $1.1 million. These costs are subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990, and must be offset by equivalent savings in order to avoid a sequestration of funds.

Section 2 of the H.R. 4724 would repeal the requirement that VA obtain a certification from local officials regarding community water and sewerage systems. For the most part, the certification requirement is a paperwork exercise which places a burden on local officials, program participants, and VA without materially benefiting veterans.

Section 3(a) of the H.R. 4724 would authorize VA to include in interest rate reduction refinancing loans an additional amount for energy efficiency improvements. We believe this provision needs more study. VA's authority to guarantee energy efficiency loans is relatively new. While VA supports the concept of energy efficient mortgages, we believe further expansion of this authority should be delayed until both VA and private lenders have had an opportunity to fully evaluate how this concept is working in practice.

Section 3(b) of the H.R. 4724 would permit veterans to refinance VA Adjustable Rate Mortgages (ARMs) to convert them to fixed-rate loans. Current law permits a veteran to refinance an existing VA loan with a new VA loan at a lower interest rate with no additional charge to the veteran's entitlement and at little or no cost to the veteran. Although the current interest rate on an ARM is often less than the rate available on a fixed-rate mortgage,

at times of low interest rates it may be beneficial over the long term for the veteran to refinance an ARM with a fixed-rate loan. The bill would permit veterans to do that.

Section 4 of the H.R. 4724 would provide that any manufactured home properly displaying a certificate of conformity with all applicable Federal manufactured home construction and safety standards would be eligible for VA financing. This section would also repeal the requirement that VA inspect the manufacturing process of manufactured homes and conduct on-site inspections of manufactured homes purchased with VA financing. VA believes that the comprehensive scheme established by the National Manufactured Housing Construction and Safety Standards Act of 1974 is sufficient to insure that new manufactured homes purchased by veterans will be suitable for occupancy. We believe VA manufactured home plant inspections and on-site visits provide no benefit to veterans, and better use can be made of VA staff time.

Section 5 of the bill would permit VA to accept conveyance of the property from a loan holder notwithstanding the holder's overbid at the liquidation sale. On occasion, due to a miscommunication, the holder's bid at the foreclosure sale exceeds VA's upset price. Under H.R. 4724, if the holder overbids, the guaranty payment computation will not change. The holder will, however, be permitted to convey the property to VA for the upset price. VA does not believe either the Government or the veteran is prejudiced by an overbid, and it is still cost-effective for VA to acquire the property for the upset price.

The final section of the bill would waive the 2-year minimum service requirement for loan guaranty benefits for service members who were released from active duty due to a reduction in force. VA believes it is inequitable to deny loan guaranty benefits to such veterans who have met the minimum service requirements in chapter 37 of title 38, United States Code (generally 90 or 181 days), simply because they failed to serve 24 months when they were released early from active duty through no fault of their own. We estimate this provision will have a 5-year cost of $15.4 million. These costs would be subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990, and must be offset by equivalent savings in order to avoid a sequestration of funds. None of the provisions of the bill require additional FTE resources.

H.R. 4768

H. R. 4768 contains provisions amending veterans' education programs under titles 10 and 38, as well as the VA administered job-training program established by the Service Members Occupational Conversion and Training Act of 1992 (SMOCTA). VA supports enactment of these provisions subject to compliance with the pay-as-you-go requirements of the Budget Enforcement Act.

Section 2 of H. R. 4768 would make permanent VA's authority to approve educational assistance benefits for vocational flight training under chapters 30 and 32 of title 38, and chapter 106 of title 10, United States Code. This section is virtually identical to S. 2094, discussed earlier, which VA supports.

Congress added VA's current temporary authority to approve vocational flight training benefits through Public Law 101–237, permitting individuals eligible under the Montgomery GI Bill-Active Duty (chapter 30) and the

Montgomery GI Bill-Selected Reserve (chapter 106) to receive such benefits. Similar benefits for vocational flight training under the Veterans' Educational Assistance Program (chapter 32) were added by Public Law 102–16. Both laws provide that vocational flight training assistance will not be paid for a course commencing after September 30, 1994.

The rate of payment of educational assistance is 60 percent of the established charges for a course. Trainees must possess a private pilot license prior to beginning flight training and must meet certain medical requirements. Finally, the flight school courses must meet the Federal Aviation Administration (FAA) standards for such courses and must be approved by the FAA and the appropriate State approving agency.

In addition to establishing flight training benefits, Public Law 101–237 mandated that VA prepare a report to Congress evaluating the utilization and performance of vocational flight training under chapters 30 and 106. Based on the survey findings, it appears that for the vast majority of trainees vocational flight training courses tend to serve basic employment objectives rather than avocational, recreational and/or personal enrichment goals.

Section 3 would amend section 3115 of title 38, United States Code, to expand the resources available to VA in providing services to eligible veterans under the chapter 31 vocational rehabilitation program. Specifically, the amendment would authorize as part of a program of rehabilitation the use of nonpay and nominal pay on-job training and work experience with any "federally recognized Indian tribe," i.e., any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Costs associated with this expansion are subject to the pay-as-you-go requirement of the Budget Reconciliation Act of 1990, and must be offset by equivalent savings in order to avoid a sequestration of funds.

As a conforming amendment, section 3108 would also be amended to authorize payment of subsistence allowance at institutional rates for such training or work experience.

Under current law, this program permits VA to use the facilities of Federal, State, and local government agencies to provide on-job training or work experience at no or nominal pay. However, this program does not provide authority for VA to use the facilities of federally recognized Indian tribes for such purposes.

This amendment would increase employment opportunities for service-connected veterans who generally become employed in the position for which they have been trained under this program.

Finally, section 3 contains a technical correction to section 404(b) of the Veterans Benefits Act of 1992, Public Law 102–568, which amended section 3102 of title 38.

Prior to that law, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended section 3102 to restrict vocational rehabilitation entitlement under chapter 31 to veterans who have a service-connected disability compensable at a rate of 20 percent or more, incurred on or after September 16, 1940, and are

determined by the Secretary to be in need of rehabilitation because of an employment handicap. This amendment, however, applied only to those veterans who first file a claim for such benefits on or after November 1, 1990. Thus, those veterans with a 10 percent rating who applied before the enactment of OBRA 90 retained entitlement to vocational rehabilitation services and assistance.

Section 404 of Public Law 102–568 reopened entitlement to vocational rehabilitation for veterans having a service-connected disability compensable at a rate of 10 percent, incurred on or after September 16, 1940, provided the veteran also has a serious employment handicap. This provision was made effective on October 1, 1993, but its effect on those veterans who had previously filed chapter 31 claims was unclear.

Consequently, the amendment made by this section of the bill clarifies that those veterans with a compensable service-connected disability rating of 10 percent and a resultant employment handicap who originally applied for assistance under chapter 31 before November 1, 1990, are not affected by the subsequent OBRA 90 and Public Law 102–568 changes to entitlement criteria.

The effective date for section 3 of this bill is October 29, 1992 (the date of enactment of Public Law 102–568 which the section amends).

Section 4 of the bill would amend the definition of "educational institution" found in section 3452(c) to include any entity offering training required for completion of a State-approved teacher certificate program. This amendment will enable pursuit of alternative teacher certification programs as a 2-year pilot initiative ending on September 30, 1996.

In recent years, States have been increasingly interested in helping mature people with bachelor's degrees pursue a second career as elementary or secondary school teachers. To do this, various States have developed plans whereby a student with a bachelor's degree can obtain a teaching certificate by means other than the usual route of earning one in conjunction with earning an undergraduate degree.

Under current law, many of these programs are not approvable for VA purposes because the entities offering them are either school districts or consortia of school districts which do not meet the definition of an educational institution for purposes of the VA administered education benefits programs.

Under this amendment, any entity offering training required for completion of a State-approved teacher certificate program would automatically qualify as an educational institution.

Further, this section contains an amendment clarifying that the definition of "educational institution" found in section 3452(c) applies to chapter 30 as well.

The amendments made by this section would be effective on the date of enactment of the Act.

Section 5 would amend section 3476 of title 38 to permit VA to approve courses leading to a standard college degree offered by foreign colleges and universities outside the United States which include, as part of the curriculum, nontraditional training away from the school. This nontraditional training may include cooperative courses, independent study, work experience, internships,

or externships, provided such nontraditional training would be approvable for a stateside school under similar circumstances.

Currently, section 3476 provides that VA educational assistance benefits may only be paid for pursuit of a standard college degree program at a university or college outside the United States; in other words, when pursued solely through traditional classroom instruction at the institution of higher learning.

The amendment made by this provision applies with respect to courses approved on or after the date of the enactment of this Act.

Section 6 would amend section 3672 of title 38 to add a new subsection (e) requiring that correspondence courses and the correspondence portion of correspondence-residence courses may be approved only if the educational institution offering the course is accredited by an agency recognized by the Secretary of Education, and at least 50 percent of those pursuing the course require a minimum of 6 months to complete the course.

This section also contains three conforming amendments. The first amends section 3675 to require a State approving agency to assure that the accreditation requirements of section 3672(e) are met when approving correspondence and correspondence-residence courses; the second eliminates the reference to the period for completion of a correspondence course under section 3680 since such provision has been liberalized and incorporated in new subsection 3672(e); and the third eliminates a reference to nonaccredited course approval for correspondence courses under section 3686(c).

The amendments included in this section are applicable to programs of education exclusively by correspondence and to correspondence-residence courses commencing after 90 days after the date of enactment of this Act.

Section 7 would amend section 3674 of title 38 to increase the maximum amount made available each fiscal year to State approving agencies (SAAs) from $12 million to $13 million effective with respect to services provided after September 30, 1994. These costs are subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990, and must be offset by equivalent savings in order to avoid a sequestration of funds.

This section also eliminates two oversight requirements concerning SAAs that are no longer needed. First, it strikes the requirement that VA make quarterly reports to Congress on the payments made to SAAs for administrative expenses. Second, it eliminates the requirement under section 3674A that VA supervise functionally the provision of course-approval services by SAAs.

Section 8 would amend section 3688(b) of title 38 to clarify that if the training time of courses pursued under chapter 106 of title 10, United States Code, is not defined in 3688(a) of title 38, VA shall define full-time and part-time training for all such courses.

Section 9 would amend section 3692 of title 38 to extend the expiration date of the Veterans' Advisory Committee on Education to the year 2003. The current authority for the Committee expires on December 31, 1994. Further, this section clarifies that the educational assistance program under chapter 106 of title 10 is included within the purview of the Committee.

Finally, this section deletes from section 3692 all reference to the chapter 34 program which terminated on December 31, 1989.

Section 10 would increase the level of funding available from VA's Readjustment Benefits Account for veterans' educational and vocational counseling services provided by contract from $5 million to $6 million. These costs are subject to the pay-as-you-go requirement of the Budget Reconciliation Act of 1990, and must be offset by equivalent savings in order to avoid a sequestration of funds.

This increase would take effect on October 1, 1994.

Section 11 of H. R. 4768 would make various amendments to the Service Members Occupational Conversion and Training Act of 1992 (SMOCTA), enacted as subtitle G of Public Law 102–484. First, it would amend section 4485(d) to eliminate the prohibition against an employer providing a job training program of more than 18 months duration. The provision, however, continues to limit SMOCTA reimbursement to employers to 18 months.

Second, this section amends section 4486(d)(2) to require that wages and benefits paid to veterans receiving training under SMOCTA will not be less than benefits paid to other employees participating in similar training programs in the community for the entire period of the training. This amendment applies to SMOCTA programs beginning after the date of enactment of this Act.

Third, this section would amend section 4487, governing payment to employers to clarify that, although the period of training under a SMOCTA job training program may exceed 18 months, in no event may payment for such training exceed the amount payable for 18 months of training or the equivalent in training hours. (The reference to equivalency in training hours appropriately recognizes the fact that numerous training programs are offered which are classified on the basis of training hours in lieu of calendar months. Thus, this provision provides a needed measure of flexibility.)

Two additional amendments to section 4487 would be made to clarify the employer payment provisions in the case of an eligible person who trains (nonconcurrently) in two or more SMOCTA programs with the same employer. The first change would clarify that an employer may be paid for more than one job training program for the same eligible individual, not to exceed an aggregate amount of $10,000 or, if that individual has a service-connected disability rated at 30 percent or more, $12,000. The second would clarify that the amount of training assistance withheld from payment to the employer would not be payable until the trainee has been employed with the employer for 4 months following either completion of his or her current program or completion of 18 months of training in that program, whichever first occurs.

Finally, section 11 of this bill would amend section 4488 of SMOCTA to permit an employer to hire an eligible person for a job training program on the same day the employer transmits a notice of such hiring to the SMOCTA implementing official. However, SMOCTA training assistance would not be provided the employer if, within 2 weeks after the date on which the notice is transmitted, such official disapproves the eligible person's entry into that job training program.

Current law precludes an eligible person from beginning a program of job training until two weeks after transmission to the implementing official of the employer's notice of intent to hire the person.

H.R. 4776

H. R. 4776 would amend chapters 41 and 42 of title 38 to improve veterans' employment programs. This bill requires that the position of Deputy Assistant Secretary of Labor for Veterans' Employment and Training be a career reserved position; that Disabled Veterans' Outreach Program specialists be compen-sated at rates comparable to those paid other professionals; that veterans who served on active duty after the Vietnam era, recently discharged veterans, and women veterans be included in biennial studies conducted by the Bureau of Labor Statistics to determine unemployment among veterans; that certain Federal contractors take affirmative action to employ and advance in employment qualified veterans who serve on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized in addition to special disabled veterans and veterans of the Vietnam era currently eligible for such employment preference.

Since the provisions of this bill encompass areas under the jurisdiction of the Department of Labor, we defer to the views of that Department in this matter.

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions that you or other members of the Committee may have.

PREPARED STATEMENT OF PHILIP R. WILKERSON, DEPUTY DIRECTOR FOR OPERATIONS, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and members of the Committee: The American Legion appreciates the opportunity to share its views with you on the proposed legislation now before the Committee. We wish to commend you for holding this hearing on a number of important issues, especially the need to address problems experienced by Persian Gulf veterans in establishing claims for service connected disabilities.

S. 2330 would amend title 38, USC, to provide that undiagnosed illnesses constitute diseases in determining entitlement to service connection. Mr. Chairman, The American Legion has a number of concerns with respect to the redefinition of the term disease, as set forth in this proposal.

Currently, title 38, USC, provides certain basic standards which a veteran must meet in order to be awarded service connection. If a claim for disability is based on a disease, evidence must be presented showing that the veteran's current medical diagnosis is related to a specific disease incurred during or aggravated by military service. Over the years, Congress and VA have recognized that these standards present problems for new or unusual illnesses or diseases. As a result, certain presumptions have been incorporated into the law which reflect advances in scientific and medical knowledge regarding the latency periods and short-term and long-term health effects of various diseases and environmental hazards. Specifically, they provide that service connection may be granted for most chronic diseases if they become manifest to a degree

of ten percent or more within twelve months of discharge from service, three years for Hansen's disease and seven years for multiple sclerosis. Additional presumptions have been established for certain diseases resulting from exposure to ionizing radiation, Agent Orange or the result of being held captive as a prisoner-of-war.

Mr. Chairman, The American Legion believes that the redefinition of the term "disease," as proposed by S. 2330 would radically change the nature of the current compensation program. The proposed change to title 38, USC, would apply to all claims for service connection based on disease, not just those of veterans who served in the Persian Gulf. We recognize that the intent of this legislation is to help Persian Gulf veterans establish entitlement to service connected disability benefits. However, we believe the lowering of the standard for establishing entitlement to service connection would make it more difficult for VA to define what is and what is not a service connected disease with a fair degree of certainty and specificity, and to assign an appropriate percentage to the resulting level of disability.

We, therefore, believe the legal and medical criteria which currently apply to all claims for service connected disability, other than those of Persian Gulf War veterans, should be maintained in their present form. We also believe special criteria needs to be enacted which recognizes the difficulty of diagnosing the medical problems of Persian Gulf War veterans with the provision that such criteria should remain in effect until the scientific or medical data becomes available to either prove or disprove these veterans' claims.

We are disappointed that S. 2330 does not address the issue of the need for a comprehensive research effort into the nature and cause or causes of the medical problems affecting many Persian Gulf veterans and their families. Such research is absolutely essential in order to ensure these veterans receive proper medical care and/or disability compensation. The timely and equitable resolution of the Agent Orange issue has been severely hampered through the years by the absence of a full-time epidemiological study. The American Legion has become increasingly concerned by the inability of the Federal Government to determine what happened to make so many Persian Gulf War veterans ill, to pay compensation for disabilities many believe are related in some way to service in the Persian Gulf, and to provide them appropriate and effective medical treatment. A major epidemiological study, we believe, is the key to avoiding a repeat of the nation's tragic experience with Agent Orange.

Presently, there are over 30 government subsidized studies to investigate Persian Gulf illness. In addition, over 28,000 veterans have received a VA Persian Gulf Protocol Examination under the Registry program. VA has also centralized the adjudication of all disability claims for Persian Gulf environmental-related illnesses at the Louisville VA Regional Office. As of August 16, 1994, 4,477 claims have been received, 1,934 have been denied and 394 have been allowed and 2,149 cases are still pending. According to VA, the main reasons for denial have been that no specific disability resulting from exposure to an environmental hazard or hazards was claimed, a current disability is not shown by the service medical records or the medical condition claimed was acute and transitory without residual disability.

While VA may promulgate regulations providing presumptions relating service connection for certain diseases and disabilities, under its rule making

authority, it has recently determined that at the present time there is insufficient scientific or medical evidence to determine which, if any, veterans' illnesses are related to service in the Persian Gulf War. The net result of this determination is that disabled Gulf War veterans are faced with the impossible task of having to legally and medically prove that their current medical problems and resultant disability are directly related to their military service.

Also, medical care for Persian Gulf veterans continues to be hindered by the lack of a diagnosis or diagnoses for their problems and effective treatment modalities. Since these medical problems first came to light more than three years ago, The American Legion has been concerned by the fact that the few studies conducted by VA, Department of Defense, and other organizations have been only small-scale and piecemeal with generally inconclusive results.

Last month, however, we were encouraged by the recommendations made to the Secretary of Veterans Affairs by the Persian Gulf Expert Scientific Committee that VA should proceed with a major epidemiological study. We have urged the Secretary to expeditiously approve this recommendation. This initiative would be a major step towards addressing the medical needs and health concerns of Persian Gulf veteran and their families.

However, from a practical standpoint, the findings of any such study will not be known for several more years. In the meantime, there are many Gulf War veterans with health problems who are still in the Armed Forces, but are concerned they may be forced to leave the service because of being found unfit for duty. There are many other Gulf veterans who have already returned to civilian life and have found themselves becoming ill to the point where they are in danger of losing their job or may have already been let go. Some veterans have lost not only their jobs, but also their homes and have severe financial hardships, because of their continuing medical problems. We do not believe it is fair to make sick and disabled Gulf War veterans wait while science catches up to VA's claims adjudication process.

For these reasons, The American Legion supports the concept of mandating specific presumptions by statute which take into account the complex circumstances of the Persian Gulf War and the variety of medical conditions found to be affecting many veterans during or following service in that geographic region.

Mr. Chairman, S. 2178 sets forth a number of provisions which are intended to assist VA in adjudicating disability claims by Persian Gulf veterans. It also mandates both a comprehensive outreach program to inform Persian Gulf veterans regarding VA medical care and services and an epidemiological study into the health consequences of service in the Persian Gulf War.

The bill includes a series of Congressional findings with respect to potential health hazards of service in the Persian Gulf War. Among other things, these findings address the fact that, under current law, service connection is not being granted by VA for many of the medical problems affecting Persian Gulf veterans. In particular, these findings highlight the critical need for further research and study to ensure that those ill veterans are compensated for their service-related disability.

Such expressions of Congressional concern and intent for this type of program are important in providing VA with necessary guidance when it comes

to the practical matter of promulgating appropriate implementing regulations and adjudicating the compensation claims of Persian Gulf veterans.

S. 2178 has several stated purposes. Specifically, it would authorize the Secretary to pay compensation to Persian Gulf War veterans who have disabilities resulting from an illness or illnesses that have not thus far been diagnosed or defined and which became manifest to a degree of 10 percent or more within three years of separation from service. Compensation would not be payable where there was a preponderance of evidence that the disability was not incurred in the Persian Gulf War or that it was due to inter-current injury or illness. The payment of compensation would continue until such time as scientific evidence demonstrates that the illness is unrelated to service during the Persian Gulf War. It would also require VA to develop case assessment protocols and definitions to ensure the thorough assessment, diagnosis, and treatment of all Persian Gulf veterans within 120 days of enactment.

In addition, this legislation provides for the compilation of clinical data on Persian Gulf veterans from the Department of Defense to be used in conjunction with VA's Persian Gulf Registry program and in developing case definitions. It further requires both an outreach program, including a toll-free telephone number to provide information on VA medical care and other benefits, and an epidemiological study to assess both the short-term and long-term health consequences of service in the Persian Gulf War on veterans and their family members.

Mr. Chairman, we believe S. 2178 provides a positive and comprehensive approach toward meeting the health care and compensation needs of Persian Gulf War veterans in a timely manner. In June of this year, H.R. 4540, a bill which contained the exact same language as S. 2178 was introduced into the other chamber. The American Legion believed it provided a fair and equitable solution to the disability and compensation problems experienced by Persian Gulf veterans. As a result of that bill, an amendment to H.R. 4386, "The Veterans' Persian Gulf War Benefits Act" was adopted. The amended legislation recently passed the House of Representatives by voice vote with unanimous consent. The American Legion fully supports this measure.

Secretary Brown, in testimony on before the House Veterans Affairs Subcommittee on Compensation and Pension on H.R. 4386, indicated that the Department would be able to develop the necessary implementing regulations and guidelines within that bill's 120 day time frame. S. 2178 includes a similar provision. Because of the delays and difficulties experienced by so many disabled Persian Gulf War veterans, this statement by Secretary Brown is important and demonstrates VA's commitment to providing needed financial assistance as quickly as possible following the enactment of authorizing legislation. We, therefore, hope this Committee will take prompt action on this legislation.

S. 2305, the "Veterans Law Judge Act of 1994", would provide that members of the Board of Veterans' Appeals be referred to as veterans law judges and that the pay of such members shall be equal to that of an Administrative Law Judge (ALJ). This measure would reclassify the positions of members of the Board of Veterans Appeals (other than the Chairman and Vice Chairman) to the same level and pay status as an Administrative Law Judge under section 5372 of title 5, USC.

The American Legion recognizes the need to bring pay equity back to the members of the Board of Veterans Appeals and pay them the equivalent rate of an Administrative Law Judge. It is our understanding that the difference in pay between ALJ's and BVA members together with ALJ lifetime appointment are the main reasons for the loss of experienced Board members in the recent past. The American Legion believes this trend will continue until the pay disparity between the two positions is corrected. In the face of a current backlog of over 56,000 pending appeals, the Board should not be distracted by the continuing prospect of losing its better personnel.

The proposed legislation would authorize the appointment of the Chairman to a term of six years, with possible reappointment for an additional term. It provides that other Board members, including the Vice Chairman, shall be appointed for a term of nine years, with possible reappointment for an additional term. Certain procedures are included for notification and the opportunity for a hearing when the Secretary decides not to reappoint a Board member. The measure also sets forth certain criteria for consideration in the reappointment of a Board member which include the timeliness of the member, the case management of the member, the extent to which substantive errors appear in decisions issued by the member, and the conduct of the individual as a member of the Board.

Mr. Chairman, The American Legion backs set term limits for all Board members. We also support the provision that Board members may be reappointed for additional terms. This seems only fair, provided they are doing a good job in carrying out their duties and responsibilities. All Members of the Board in accepting their positions on the Board will know the duration of their appointment and that possible reappointment will depend in large measure upon their overall job performance.

One of the key provisions in this proposal and an important change from the Board's current policy is the stipulation that the quality and timeliness of a Board member's decisions as well as their productivity will be factors in the formal evaluation of a member who is up for reappointment. However, in light of this requirement, we strongly believe the Board must allocate additional personnel and resources specifically to its quality assurance function. Such efforts to guarantee the overall quality of the Board's decisions will be essential, whether or not Board members are accorded ALJ status, especially in view of the anticipated increase in production which will be possible with enactment of legislation authorizing single member decisions.

We believe the resolution of the pay disparity issue, as proposed, should go a long way toward improving retention of Board members. However, we recognize the fact that this legislation in no way ensures that veterans will receive better or more timely decisions, nor do we believe it will help drive down the mounting backlog of pending appeals or the number of poor decisions made by the Board. More money and a new title alone will not, in all probability, correct the Board's current problems. The recommendations recently made to the Chairman of the Board of Veterans Appeals by the Select Panel will also play an important role in helping improve the Board's operations.

S. 2320 would amend title 38, USC, to eliminate the requirement that veterans of the Philippine Commonwealth Army and the dependents and

survivors of such veterans be paid certain benefits in Philippine pesos. The American Legion has no position on this proposal.

S. 2321 would amend title 38, USC, to make eligible for burial in the national cemeteries the spouse of a veteran who predeceases the veteran. The American Legion supports the effort to make this technical amendment to section 2402(5) of title 38, USC.

S. 2322 would amend title 38, USC, to increase the amount that the Secretary may pay (from $300 to $600) for the cost of a contract burial of a nonservice-connected disabled veteran who dies in a Department of Veterans Affairs facility. The American Legion supports the approval of this measure.

S. 2323 would amend title 38, USC, to clarify the coverage and protection provided to medical quality assurance records under section 5705. The American Legion has no objection to this proposal.

S. 2324 would amend title 38, USC, to extend the permanent authority for waiver or reduction of retirement pay for registered nurse positions; to extend the permanent requirement for review of agreements for special pay for physicians and dentists; and to extend the authority to enter into enhanced-use leases. The American Legion supports all provisions contained in this measure.

S. 2325 would enable the Secretary of Veterans Affairs to reauthorize programs relating to substance abuse and homeless assistance for veterans and to establish a demonstration program to provide assistance to homeless veterans.

Mr. Chairman, the Compensated Work Therapy Transitional Residence Program (CWT/TR) program, enacted in 1991, authorizes VA to purchase and renovate 50 residences as therapeutic transitional houses for chronic substance abusers, many of whom are also homeless, jobless and have mental illnesses. Veterans must pay rent from money earned by working for private businesses or Federal agencies which have contracts with VA to employ the veterans. Once a residence is fully renovated and operational, the rent collected from the veterans participating in the program has generally exceeded the operating costs of the residence.

Initial reports relating to the benefits of the CWT/TR program indicate that well over half of the participating veterans complete the program and have enjoyed substantially better sobriety, employment, and housing status than before entering the program. In view of its overall effectiveness and minimal cost, The American Legion strongly supports the reauthorization of the CWT/TR program.

In FY 1993, VA operated substance abuse treatment programs at 110 medical centers and treated 6,300 veterans. The Legion believes that granting VA permanent authority to contract with non-VA halfway houses provides continuity to a program that has proven its worth over time. Such authority will be essential in ensuring that the use of these halfway houses remains an integral part of VA's treatment of veterans with substance abuse problems.

Under the Homeless Veterans' Reintegration Project, established by the "Stewart B. McKinney Homeless Assistance Act of 1987", the Department of Labor Veterans Employment and Training Service is authorized to provide grants on a competitive basis to community-based organizations to provide employment, training, and placement to homeless veterans. This grant program

has been appropriated only $5 million per year in recent years and has assisted 32 community groups with programs to help homeless veterans reintegrate into the labor force. The American Legion supports the reauthorization of the Stewart B. McKinney Homeless Assistance Act and commends the increased resources to provide the continuum of services that homeless veterans need.

VA's Homeless Chronically Mentally Ill (HCMI) Program, one of two major VA homeless programs, authorizes VA outreach workers to contact homeless veterans in the community, assess and refer them to community services, and place eligible veterans in contract community-based residential treatment facilities. The program has been reauthorized several times, but essentially remains in the status of a pilot program. This is despite the fact that the program now involves 57 medical centers and has a $29 million budget. The American Legion believes the HCMI program has proven its worth and we support the proposal to make it a permanent part of the VA's overall health care effort.

Mr. Chairman, we also believe it is important that VA forge partnerships among homeless veterans' service providers, capitalizing on the strengths of both VA and community organizations. In fact, VA has already initiated several such partnership programs in Pittsburgh, Dallas, Los Angeles, Buffalo and Milwaukee. However, it is not clear how the proposed partnership programs would differ from existing VA programs or how the demonstration projects would be funded. Also, it is uncertain what services VA and private contractors will be expected to provide. It is the view of The American Legion that VA has already established a unique partnership program with homeless service providers and we believe it must be made clear how the proposed demonstration projects will contribute to improved case management, substance abuse counseling, basic medical care, and referrals to other VA health and benefits programs.

"The Homeless Veterans' Comprehensive Service Program Act of 1992", Public Law 102-590, authorized VA to establish up to 4 comprehensive homeless centers (CHC). VA has now established the 4 centers authorized by law and due to the success of the CHCs and the large number of homeless veterans in certain metropolitan areas, the Legion believes an expansion of the program is necessary. However, we are concerned that no additional appropriations have been authorized which would permit the establishment of additional centers. The development of cost assessments for the creation and operation of a CHC is important in order to ensure that VA can consider the establishment additional CHCs even in the absence of additional resources specifically targeted for such expansion.

Mr. Chairman, The American Legion is strongly encouraged by VA's current efforts to combat homelessness. Unfortunately, Public Law 102-590 requires that funds for various homeless veterans initiatives be specifically provided for in an appropriation law. Until this provision of the statute is removed, VA will be unable to continue to set aside funds for private sector entities to comply with the grant and per diem payment provisions of the law.

S. 2365 would provide for a study of the health consequences for the spouses and descendants of veterans who were exposed to ionizing radiation.

The findings of long-term scientific studies have confirmed specific health risks among the Atomic Veterans associated with their exposure to ionizing

radiation. Congress has responded by enacting legislation authorizing compensation to veterans and their survivors for certain disabilities resulting from radiation exposure during military service. Many Atomic Veterans believe their exposure to radiation has adversely affected their own health as well as the health of their spouses and descendants. Despite these claims, government studies have not examined the issue of possible health consequences among family members of radiation-exposed veterans. The American Legion strongly supports this proposed study.

S. 2387 would amend the "Service Members Occupational Conversion and Training Act of 1992" (SMOCTA) to permit a period of training under the Act of more than 18 months and for other proposes.

Presently, eligible employers who provide job training to recently discharged veterans may receive a subsidy of 50 percent of the training wages, payable over an 18 month period. Unfortunately, the 18 month limitation has prevented many veterans from entering some types of training.

The first amendment proposed by S. 2387 would allow a veteran to enter a training program that lasts longer than 18 months, provided the employer is willing to do so without the benefit of a subsidy for the extended training period. We favor this amendment because it would provide employers and the veterans a wider range of training opportunities.

The bill would also require employers to pay a wage normally paid to other employees in the same or comparable training programs who are being trained in the same community as the veteran. The American Legion believes that employers should provide veterans with the same amount of pay as non--veterans in similar training programs and considers this amendment fair and equitable.

With regard to similar legislation which has been passed by the House, Section 11 of H.R. 4768 contains provisions that would amend the "Service Members Occupational Conversion and Training Act" by eliminating the 18 month restriction on job training. It would also require that during the entire period of training, veterans receive the same pay and benefits as other employees participating in similar training programs in the community. Since these provisions are the same as those proposed by S.2387, we also support Section 11 of this bill.

H.R. 4088 proposes a 3.3 percent cost-of living adjustment (COLA) in veterans' disability compensation and survivor's dependency and indemnity compensation (DIC) benefits, effective December 1, 1994.

The American Legion supports the proposed cost-of-living adjustment in compensation benefits for service disabled veterans and the survivors of those who died in service or of service related causes. We have expressed support for similar periodic adjustments in the past as being both necessary and fair in ensuring that the economic support provided service disabled veterans and their survivors by VA keeps up with the increased cost of living.

In addition, we are relieved that this proposal does not seek to automatically index future adjustments in disability compensation and DIC benefits to any adjustment in the benefits provided for Social Security (SSA) and VA pension recipients. We take this opportunity to express our continuing opposition to the concept of indexing the VA disability compensation and DIC COLA to the

SSA COLA. Our position on this matter is based on the long-standing belief that hearings on the subject of proposed adjustments in disability compensation and DIC before House and Senate Veterans Committees provide an important and necessary forum in which issues related to the needs of service disabled veterans and their survivors can be presented for discussion. This valuable opportunity would be lost, if future compensation and DIC COLAs were to be automatically indexed to adjustments in SSA benefits.

H.R. 4724 would amend title 38, USC, for the purpose of improving the VA Home Loan Guaranty benefit program for veterans and their spouses.

Mr. Chairman, we are all aware of the on-going reductions in Armed Forces personnel. During this time of rapid down sizing, the Reserves and National Guard are now fulfilling many missions normally assigned to the active military. Today's reserve units are structured to augment the nation's shrinking active armed forces. The importance of reserve duty is growing daily as United States world commitments increase. This shift in responsibility was clearly evident during the Persian Gulf War.

Also, with the rapid down sizing of the military, many veterans are being released from active duty "At the Convenience of the Government" prior to the completion of their obligated service time. However, title 38, USC, section 5303(b)(1) stipulates that benefit eligibility based on length of active duty on or after September 7, 1980 requires the completion of 24 months of continuous active duty or the full period for which such person was called or ordered to active duty. The fact that these individuals do not meet the minimum service requirements of the law means that they are not eligible for veterans benefits.

The American Legion does not believe these veterans should be denied benefits due to circumstances which are beyond their control. The bill would correct what we believe to be an inequity under the current law for both former members of the reserves and their spouses and veterans who do not meet minimum service requirements because of separation or release from active duty due to down sizing.

With respect to the VA Home Loan Guaranty program, many veterans and lenders who desire to participate are frustrated by the redundancy in some of the administrative requirements. This legislation would relieve veterans of the requirement to furnish documentation on local sewage systems and also not require inspection reports for manufactured homes. Since current laws already address these issues, the proposed elimination of such requirements will help simplify the home buying process. It will also greatly enhance the marketability of VA properties by allowing the government to accept overbids on foreclosures. This would be a much needed program improvement and it also makes sound business sense.

Finally, this measure would provide veterans the flexibility to refinance existing loans and/or the ability to "lock in" rates on an adjustable rate mortgage. The American Legion believes this provision would be a wise addition to the provide and will provide veterans the same types of economic opportunities that are available to non-veterans.

H.R. 4088 also provides that decisions of the Board of Veterans Appeals on claims of clear and unmistakable error are judicially reviewable by the Court of Veterans Appeals. This proposal partially addresses the recent decision of the U.S. Court of Appeals for the Federal Circuit in Smith v. Principi which

has affirmed VA's interpretation of the current statute. The Delegates to the 1994 American Legion National Convention adopted Resolution No. 139 in support of a change in the current statute removing the restriction on a veteran's access tot he Court of Veterans Appeals in claims of clear and unmistakable error. We believe the proposed legislation should be amended to also include claims previously denied by the Board on the basis that clear and unmistakable error did not apply.

H.R. 4776, "The Veterans' Employment Act Of 1994," calls for several amendments to chapters 41 and 42 of title 38, USC.The first provision of this bill would require that the position of the Deputy Assistant Secretary of Veterans Employment and Training Services be a "career reserved position" as defined by subsection 3132(8) of title 5, USC. Currently, appointment to this position is made by the Assistant Secretary. The American Legion supports the proposed change because we believe it would help stabilize the position of the Deputy Assistant Secretary of Veterans Employment and Training Services.

The bill would also require that Disabled Veterans Outreach Program Specialists (DVOPS) be compensated at a rate comparable to other professionals. Mr. Chairman, the Legion is very favorably impressed with the effectiveness of DVOPS and their dedication to their veteran clients. We strongly support this provision.

In addition, the bill would require that the biennial studies conducted by the Bureau of Labor Statistics include veterans who served on active duty after the Vietnam Era, recently discharged veterans, and female veterans. Because we believe the development and inclusion of such statistical information would be helpful in assessing the employment and training needs of all veterans, the Legion supports this proposal.

Further, the bill would require certain Federal contractors to take affirmative action to employ and advance employment qualified special disabled veterans, veterans of the Vietnam Era, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge or ribbon has been authorized. This provision would increase the contractor's responsibility regarding affirmative action by requiring them to employ and promote those veterans who served in military campaigns in Panama, Lebanon, Grenada, the Persian Gulf and Somolia.

The American Legion firmly believes that those who served this country honorably during a time of declared war or military action against hostile forces must be given every opportunity to find meaningful employment when they return to civilian life. Since this amendment would open new employment opportunities for the veterans of the conflicts listed above, we support this proposal.

This bill would also require certain Federal contractors to list all job openings with the local Job Service Office. Currently, they are only required to list "suitable" openings. The Legion supports this provision, because it would make Federal contractors more accountable.

Mr. Chairman, that concludes our testimony.

PREPARED STATEMENT OF RICHARD F. SCHULTZ, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and members of the Committee: On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I thank you for this opportunity to express the views of the DAV relative to legislation affecting our nation's service-connected disabled veterans and their families which is currently pending before this Committee.

At the outset, Mr. Chairman, I wish to thank you for scheduling today's hearing. Clearly, actions taken by the Committee will materially affect the lives of those Americans who gave of themselves in defense of the freedoms we all enjoy.

S. 2305

Mr. Chairman, S. 2305 would provide that members of the Board of Veterans' Appeals will be referred to as "veterans' law judges." It would also provide for pay equity between Board members and Administrative Law Judges (ALJ's) and automatic reappointment of a Board member unless affirmative nonreappointment notice and hearing procedures are initiated. The bill also requires development of objective standards governing reappointments.

The DAV is cognizant of the large workload of the Board and the necessity to retain experienced qualified Board members if the Board is to meet the challenges which face it. The DAV supports pay for Board members comparable to that of administrative law judges. This is not only a measure to bring equitable treatment to dedicated Board members, but is also necessary to prevent the loss of trained members, itself essential to maintaining timely and efficient services to veterans.

The DAV testified in support of H.R. 3240 which would have eliminated the current nine-year term for Board members and made theirs permanent career appointments. As with pay comparability, we believe this measure would aid in the recruitment and retention of qualified Board members. The DAV believes that fixed terms with reappointment authority, as provided in current law, is unnecessary and burdensome. Rather, accountability can be adequately addressed with proper standards governing merit pay and removal for cause. Thus, while we believe it beneficial to improve conditions of employment forBoard members, we also believe that Board members should be held to certain standards of conduct and efficiency if the ultimate goal of timely and proper adjudications is to be realized. The procedures included in H.R. 4088 below properly address this area of concern.

The DAV does not advocate any changes regarding the conditions of the Chairman's appointment.

Unlike the measures for pay comparability and changes to conditions of appointment, the DAV does not believe that designating Board members as veterans' law judges is essential or even beneficial. The Board of Veterans' Appeals is a non-judicial, administrative tribunal that performs an appellate review function for and under the jurisdiction of the Secretary of Veterans Affairs. Congress has delegated the Secretary's jurisdiction to decide claims to the Board in section 7104, title 38, United States Code. The Board, through its

Chairman, is directly responsible to the Secretary of Veterans Affairs, as provided in section 7101, title 38, United States Code. The Board makes an "institutional" decision in the name of the Secretary, to whom the veteran has appealed. The decision is the product of an agency, not an individual, as with a judge. The Board is not independent, and its organization, function, and powers are not of a judicial nature or flavor. Nor should they be.

The public, grateful for the patriotic contributions of its veterans, has always wanted benefits administered to veterans in a very protective, paternalistic, and informal way. Adjudicators at all levels are charged with special duties to assist veterans, unlike any other agency. The system is nonadversarial, and a traditional judicial or legalistic context is inappropriate.

Judicial review of veterans' claims begins at the Court of Veterans Appeals level. That is the demarcation between the informal, nonadversarial process and the formal, adversarial process. When judicial review legislation was being debated, there was concern among some that it would result in formalization of the VA claims adjudication system. As a result, a common theme that runs throughout the legislative history from both the House and Senate is the intent to ensure certain procedural protections while preserving the informality that characterized the existing system at the administrative level.

Among several similar statements on this issue, the Senate said:

> As discussed earlier, the Committee was guided in its decisions relating to procedural matters by a sense that existing VA procedures are generally fair and workable and that any changes should be made with the intent of preserving such procedures and the informal atmosphere of VA adjudication proceedings while providing claimants with statutory assurance of a full opportunity to have their arguments and evidence presented to the Board.

S. Rep. No. 418, 100th Cong., 2d Sess. 38 (1988).

The House characterized the informal system and the intent to maintain it as follows:

> Congress has designed and fully intends to maintain a beneficial nonadversarial system of veterans' benefits. This is particularly true of service-connected disability compensation where the element of cause and effect has been totally by-passed in favor of a simple temporal relationship between the incurrence of the disability and the period of active duty.
>
> Implicit in such a beneficial system has been an evolution of a completely ex-parte system of adjudication in which Congress expects VA to fully and sympathetically develop the veteran's claim to its optimum before deciding it on the merits.
>
> Even then, VA is expected to resolve all issues by giving the claimant the benefit of any reasonable doubt. In such a beneficial structure, there is no room for such adversarial concepts as cross examination, best evidence rule, hearsay evidence exclusion, or strict adherence to burden of proof.

H.R. Rep. No. 963, 100th Cong., 2d Sess. 13, *reprinted in* 1988 U.S.C.C.A.N. 5782, 5795. The House Veterans' Affairs Committee said: "The

Committee believes that the existing system achieves a high degree of accuracy and fairness and intends that no changes be made to the system unless it would enhance the achievement of these two goals." H.R. Rep. No. 963 at 15, *reprinted in* 1988 U.S.C.C.A.N. at 5797.

Increased efficiency does not necessarily follow from increased formality; the need is to improve efficiency, not increase formality. Elevating the title of Board members to judges may change their own perception of their role and status, but veterans' perceptions are more important than the Board's perception. To refer to Board members as judges connotes an adversarial, impersonal, and litigious process. While veterans' claims are still being pursued through informal advocacy, it is not desirable to have adjudicators whose demeanor and title is that of a judge. This might well be the first step in erosion of the informal, user-friendly environment that sets VA apart from other bureaucracies.

Moreover, the Board of Veterans' Appeals is still a Board, not a court. It is a discrete element of VA, unlike the administrative law judge corps. A board is comprised of board members, not judges. Although the work of administrative law judges is similar to that of administrative boards, for example, the Merit Systems Protection Board, and although administrative law judges are structurally part of the agency, they function independent of the agency in their decision-making. The administrative law judge must be impartial. As noted, Board members act as the Secretary's appellate decision-makers. Within the VA adjudication process, unlike other proceedings, there is a declared "pro-claimant bias." H.R. Rep. No. 963 at 25, *reprinted in* 1988 U.S.C.C.A.N. at 5807. The distinctions between judges and members of the Board of Veterans Appeals are therefore more than matters of perception, and those beneficial distinguishing characteristics of the Board's members should be maintained.

The DAV does not support designating members of the Board of Veterans Appeals as veterans' law judges. The law should not dictate that Board members will be referred to as veterans' law judges and addressed as "your honor" perhaps, merely to artificially change their status or heighten their esteem. Matters of perception, respect, and public confidence should correlate to the degree of professionalism in their decisions and conduct rather than their titles.

S. 2330

Mr. Chairman, the DAV is very appreciative of your efforts to ensure that Persian Gulf War veterans are, like the veterans of America's other conflicts, compensated for disabilities incurred in the line of duty. S. 2330, introduced by you, would address the problems of veterans of the Persian Gulf War who suffer from undiagnosed illnesses.

These veterans' diseases, though as of yet undiagnosed, are no less real and no less disabling than if they had an established name. This bill would remedy any uncertainty about the current compensation law by defining disease, for disability compensation purposes, to include illnesses which, for all practical purposes, are diseases but which have not been given an official diagnostic classification.

The DAV believes that the government has a duty to act promptly to begin compensating these disabilities. Delay will have a very detrimental effect upon

those who served in the Persian Gulf War, but who find themselves totally or partially disabled. These veterans have the same immediate needs for themselves and their dependents that all other veterans have. We simply cannot leave them unaided in this predicament. Therefore, providing them with disability compensation must be a priority.

While there are some differences in view as to how the goal of compensating these veterans can best be achieved, there is general agreement that they should be compensated. These differences cannot be allowed to become obstacles preventing or delaying accomplishment of the goal. Thus, DAV urges that all appropriate measures be employed to quickly get the means in place to begin compensating these veterans.

The DAV does caution that it is inappropriate to take away from the benefits of veterans of earlier wars to pay for the compensation of veterans of later wars. The right to compensation which is intended to fully offset economic loss should be inviolate. All service-connected disabled veterans should have the security of knowing the government has a commitment to them and that they will not have to give up a portion of their compensation to pay for America's future wars. The quality of life of America's war veterans cannot be dependent upon how many times our country is involved in military conflicts. Congress must ensure that funds are provided to adequately and equally compensate for the economic loss of all service-connected disabilities, regardless of which war they were incurred in. The DAV therefore opposes any measure which would finance compensation for Persian Gulf War veterans by rounding down cost-of-living increases or which similarly takes away from other veterans' benefits.

Therefore, if legislation to compensate Persian Gulf War veterans is "scored" by the Congressional Budget Office as requiring a so-called "pay go" offset, we urge that a waiver to the Budget Enforcement Act be approved. This clearly demonstrates why Congress must retain its control over budget priorities and must not allow a budget rule to dictate a policy of requiring one category of service-connected disabled veterans to forego a portion of their compensation payments so that veterans of a different war may also be compensated for their service-connected disabilities.

S. 2178

S. 2178 also addresses the special problems of Persian Gulf War Veterans. It would provide compensation for undiagnosed illnesses occurring in Persian Gulf War veterans for which causes other than military service cannot be identified until such time as the disease can be disassociated from military service with scientific evidence. This bill would also require the Secretary of Veterans Affairs to develop case assessment protocols and case definitions, establish an outreach program for Persian Gulf War veterans and their families, authorize further research activities related to service in the Persian Gulf, and report his findings on these illnesses.

The DAV is, again, appreciative of this measure designed to equitably compensate for undiagnosed illnesses of Persian Gulf War veterans while promoting and providing for support activities and research to resolve the uncertainties related to the underlying causes and nature of these unusual maladies.

Although the approach here differs slightly from S. 2330, both bills recognize that the benefit of the doubt must be given to these veterans who through no fault of their own are unable to establish service causation by direct evidence. Rather, they must rely on circumstantial evidence to demonstrate that they suffer from illnesses whose exact nature and causes are unknown but whose origin is inferentially linked to one common experience of those afflicted, the Persian Gulf War. Both bills seek to accomplish the same goal, providing an appropriate measure of recompense for the economic loss caused by these illnesses.

The DAV is most concerned that Persian Gulf War veterans be compensated for these poorly understood and frustrating illnesses without further delay. Although the mechanics of these two bills are somewhat different, both would accomplish the ultimate goal, with due regard for the unique problems related to proving service connection for unclassified illnesses.

For these reasons, the DAV also fully supports S. 2178.

S. 2094

S. 2094 would make permanent the authority of the Secretary of Veterans Affairs to approve basic educational assistance for flight training. Mr. Chairman, while we have no mandate from our membership regarding a position on this measure, its purpose is a beneficial one, and the DAV therefore certainly does not have any opposition to it.

S. 2320

This measure, introduced at VA's request, would, if enacted, eliminate the current requirement that certain veterans of the Philippine Commonwealth Army who are entitled to VA benefits be paid their VA benefits in pesos.

We are informed that the rationale for requiring the payment of VA benefits to these individuals in pesos no longer exists and that payment of these benefits in U.S. dollars would not result in any increased cost to the U.S. government. While the DAV has no national convention mandate relative to this issue, we do not oppose this measure.

S. 2321

This bill, also introduced at the request of the VA, would make a technical correction to title 38, U.S.C. allowing the "spouse" of eligible veterans to be buried in a national cemetery. This change is necessary to correct an unintended consequence of Public Law 95-576 which made gender neutral changes to title 38, inadvertently omitting spouses of certain eligible veterans from entitlement to burial in national cemeteries.

The DAV has no mandate from our membership on this measure. We do, however, understand the need for the technical change proposed by this measure.

S. 2322

Introduced at the request of the VA, this bill would, if enacted, increase the maximum amount VA may pay for burial of certain nonservice-connected veterans who die in VA facilities from $300 to $600. The VA reports that funeral expenses have risen significantly since 1978 when the maximum amount was increased from $250 to $300. The DAV has no objection to this bill.

S. 2331

Mr. Chairman, S. 2331 introduced at VA's request, proposes to amend section 7426(c), title 38, U.S.C., making permanent VA's authority to waive, in the case of registered nurses, the reduction in retirement pay as required for title 5, U.S.C., annuitants.

We believe VA's authority to exercise an exception to the otherwise required annuity reduction has permitted the employment of quality health care providers that would not have been possible without such exception. As veterans have received direct benefits from this process and will continue to do so in the future, we are supportive of this proposal.

Section 2 of the legislation proposes to make permanent the requirement that written agreements entered into for the purpose of providing special pay for the recruitment and retention of physicians or dentists shall be subject to review.

Mr. Chairman, section 3 of the legislation would extend for two years, from December 31, 1994 to December 31, 1996, the VA's authority to enter into enhanced-use leases, consistent with section 8162, title 38, U.S.C.

The DAV has no official position with respect to the latter sections and do not object to their favorable consideration.

S. 2323

Introduced at VA's request, this measure proposes amending and clarifying section 5705, title 38, U.S.C., pertaining to the coverage and protection provided to medical quality assurance records.

As we view the plain language of S. 2323, it seems apparent that its intent is to deny access to certain records and documents to a narrow class, principally, if not entirely composed of veterans, their dependents and survivors. Simultaneously, the bill proposes the addition of four (4) new exclusions to the currently existing broad prohibition of releasing medical quality assurance information and records. Taken together with already existing exceptions virtually every judicial or administrative proceeding is addressed.

Mr. Chairman, we see the very real probability that veterans or others acting on their behalf, will be treated unfairly and to their detriment when pursuing claims under the Federal Tort Claim Act (FTCA).

Claims of program integrity being compromised without the enactment of the proposed amendments tend to ring hollow. We remain confident that VA employees involved in quality assurance programs pursue their duties honestly and with vigor. Any allegation that identified deficiencies would go unreported for fear they would later be used against VA or the individual involved seem invalid.

Mr. Chairman, we are concerned S. 2323, as presently constructed, has the very real potential to unfairly penalize veterans pursuing disability benefits while aiding a system that already has virtually unlimited legal and medical resources at its disposal.

S. 2365

Introduced by Senator Wellstone, S. 2365 proposes the conducting of a study to determine the health consequences for family members as a result of a veteran's exposure to ionizing radiation.

The VA, in consultation with the Departments of Defense and Health and Human Services, would be required to enter into an agreement with the Medical Follow-up Agency of the Institute of Medicine of the National Academy of Sciences, or alternative organizations to carry out the study.

As defined, the purpose of the study is to determine the nature and extent, if any, of the relationship between the exposure of certain veterans (as defined by the measure) to ionizing radiation and:

- genetic defects and illnesses in the children and grandchildren of such veterans; and
- untoward pregnancy outcomes experienced by the spouses of such veterans, including stillbirths, miscarriages and neonatal deaths.

Mr. Chairman, the DAV has no official position regarding this issue, however, we will not object to the conduct of the proposed study at this time. However, we are concerned that VA continues to bear full responsibility for funding of needed but multiple research projects and other directives.

We suggest, Mr. Chairman, that the responsibility for funding of this study not be borne by VA in its entirety, but other federal departments and or agencies be required to participate in the overall funding.

S. 2324

Mr. Chairman, S. 2324 proposes to provide protection against certain prohibited personnel practices to employees appointed under chapters 73 and 74 of title 38 U.S.C.

The Disabled American Veterans has no official position on this proposal. However, we do believe these employees should have the same rights and remedies available to all federal employees, and therefore, would support such a legislative change.

S. 2325

We also reviewed legislation proposing to reauthorize programs relating to substance abuse and homeless assistance for veterans, and to authorize a demonstration program to provide assistance to homeless veterans, and for other purposes.

Section 1 would reauthorize the demonstration program of compensated work therapy and therapeutic transitional housing. We believe these to be very good programs and would have no objection to reauthorizing those programs through fiscal year 1996.

Section 2 would by deletion of subsection (e) of Section 1720(A), make permanent VA's authority to provide treatment and rehabilitation for alcohol or drug dependence or abuse disabilities.

Section 3 would reauthorize the Homeless Veterans' Reintegration Project and specifies funding levels for fiscal years 1995, 1996 and 1997. Mr. Chairman, the Homeless Veterans' Reintegration Project, as administered by the Department of Labor, has been a very successful program and we support its continuation and adequate funding.

Section 4 would authorize community-based residential care for homeless, chronically mentally ill and other veterans.

Mr. Chairman, perhaps one of the biggest ongoing problems facing our nation's veterans today is being on the streets and without a home. Regrettably, many of these homeless veterans are chronically mentally ill. Recognizing this, VA has developed some very unique and successful programs to address the needs of this group of deserving veterans. We believe the authority in Section 4 would extend additional flexibility and resources to the Secretary in order to provide these services.

Section 5 would require the Secretary to submit an annual report to the Committees on Veterans' Affairs of the Senate and House of Representatives.

We agree this report is necessary. However, Mr. Chairman, we would recommend amending paragraph (a)(2) to include language requiring VA to include in their report the number of disabled veterans, Vietnam-era veterans and recently separated veterans.

Mr. Chairman, we have no objections to Section 6, which would require a "Report on Assessment and Plans for Response to the Needs of Homeless Veterans."

Also, we have no objection to Section 7, which would establish a demonstration program for VA and community-based organizations to assist homeless veterans.

Mr. Chairman, we also have no objection to Section 8 which would materially expand the Homeless Veterans Comprehensive Service Programs Act of 1992 by increasing from four (4) to twelve (12) the number of demonstration programs.

H.R. 4088

Title I of H.R. 4088 would provide a cost-of-living adjustment in compensation for service-connected disabilities, in the clothing allowance, and in dependency and indemnity compensation for survivors. Title II of this bill would codify the administrative recognition of four additional diseases as related to herbicide exposure, for which service connection may be presumed. Title III would provide for pay comparable to ALJ's for Board of Veterans' Appeals members and change the conditions of their appointments. Title IV would make several improvements in the claims adjudication process and require the Secretary of Veterans Affairs to report to Congress. Title V would make clarifications regarding the applicability of title 38 provisions to veterans exposed to radiation while participating in nuclear testing of other nations, would extend authority for a VA Regional Office in the Philippines, would

make changes regarding the effects of renouncement of benefits, and would provide benefits for the month of the veteran's death in the case of certain surviving spouses.

The adjustment for cost of living would result in a three-percent increase in the rate of the affected benefits. If enacted, this bill would offset against the increase in the cost of living incurred by disabled veterans who have incomes part or all of which are fixed and whose buying power would otherwise be eroded. Insofar as the provisions of this bill would accomplish that purpose, we applaud it.

The cost-of-living adjustment is based on a projected three-percent rise in the cost of living. We are confident that, should the increase in the cost of living prove to be more than three percent, appropriate measures would be taken to equalize the raise. We note that S. 1927 would provide a cost-of-living increase equal to the rate of inflation as measured by the Consumer Price Index.

We are concerned that H.R. 4088 provides for no adjustment under section 1114(k), of title 38, United States Code. The economic impact of a given disability increases proportionate to the increase in the cost of living. If this is true for all other disabilities, it is true for those compensated under section 1114(k).

S. 1927 would increase the "K" award, and the DAV is appreciative of this committee's recognition of the need to adjust compensation evenly. As we noted in our testimony in support of S. 1927, we are also appreciative of the provision in your bill which requires rounding to the nearest whole dollar amount. This is more equitable than rounding down in all cases.

The Secretary of Veterans Affairs has added four diseases to the list of disabilities which may be presumptively service connected in the case of a veteran exposed to a herbicide agent while serving in the Republic of Vietnam. These are Hodgkins's Disease, porphyria cutanea tarda, respiratory cancers, and multiple myeloma. Title II of this bill would codify these diseases, already added to the list by the Secretary of Veterans Affairs.

Mr. Chairman, we believe it is preferable for the specified list of disabilities codified in the statute to be regularly amended to expressly include additional named disabilities recognized by the Secretary rather than merely have them codified by reference to the Secretary's regulations. The DAV supports this measure.

Mr. Chairman, title III of the bill would amend section 7101 of title 38, United States Code, to equate the pay and benefits of members of the Board of Veterans' Appeals to that of administrative law judges.

The DAV is already on record as supporting legislation to establish pay comparability between Board members and ALJ's. This was a recommendation of the DAV and other veterans' organizations in the Independent Budget presented to Congress for Fiscal Year 1995, and the DAV testified in support of this measure in the House. The reasons for this legislation are compelling. The demands placed on Board members are very heavy, and maximum productivity without compromising quality requires the retention of trained, experienced Board members. Thus, it is essential that measures be instituted to prevent the flight of highly qualified members to ALJ positions with other

agencies. We simply cannot afford to lose these Board members at a time when Board personnel and resources are already severely strained.

As this Committee no doubt is already aware, the substantive and procedural aspects of veterans' law are unique; the traditional approach and legal analyses often do not serve VA appellants in the way Congress intended. Therefore, a background in veterans law, as opposed to a general legal background, is indispensable. There is no substitute for Board experience when it comes to the special dedication and insight that are cultivated in the setting of the Board. The loss of that special talent is very detrimental to the special mission of the Board and therefore the mission of the VA. This loss must be prevented. As we observed in our testimony on S. 2305 above, this bill is not only a measure to bring equitable treatment to dedicated members of the Board, itself a worthy goal, but is also essential to maintaining an acceptable level of services to veterans.

This bill also replaces the current fixed, nine-year, term of appointment for Board members with a performance review and recertification process. Removal of a Board member for reasons other than performance would be under the same standards as removal of an ALJ.

The DAV believes that this is an improvement which will serve both Board members and the veteran constituency well. It conditions continued Board member status upon satisfactory performance, measured by objective criteria. Board members are protected from unfair or arbitrary removal, and veterans are protected from substandard adjudications and production by a process of accountability.

The DAV believes that the amendments in this Bill establishing pay equity and performance review and recertification are a very reasoned approach to the task of maintaining experienced and quality members in the Board of Veterans' Appeals, while at the same time, ensuring proper performance. This is an important element in the larger goal of making VA's claims processing more efficient.

As noted, title IV of the Bill includes provisions intended to improve the VA adjudication process in several areas.

Section 402 would require a report on the feasibility of reorganization of adjudication divisions. DAV has no objection to requiring the Secretary of Veterans Affairs to report to the House and Senate Veterans' Affairs Committees on the feasibility and impact of a reorganization of the adjudication divisions and Veterans' Benefits Administration (VBA) Regional Offices. However, we will reserve our comments on such reorganization until that time when the Secretary makes his report available.

We supported all of the proposed changes in sections 403 through 406 when we testified before the House. We believe the creation of a master record will serve to make the VA system more efficient and simpler to use. Pilot programs to improve the VA system are also a positive step, as is liberalization of evidence requirements for proof of relationship and medical examinations. These provisions are also included in S. 1908. Given the long delays in processing of appeals, expedited treatment of remanded claims is fully justified.

We previously testified in support of amendments permitting prescreening of appeals in order to expeditiously act on those cases needing further

development. We suggested that these amendments be included when we testified in support of provisions for advancement of a case on the docket in S. 1904. We therefore reaffirm our support for these amendments as contained in section 407 of this bill.

Section 408 would codify into title 38, United States Code, the authority of the Secretary and the Board to correct clear and unmistakable error.

Statutory authority permitting the correction of clear and unmistakable error dates from 1917, and regulatory authority dates back to 1928. In decisions of the courts from the 1920's, 1930's and 1940's the statutory and inherent authority of the Director of the Veterans' Bureau and the Administrator of the Veterans Administration has been reaffirmed. Although authority for correction of error and unmistakable error was contained in earlier statutes-at-large, there is currently no express statutory authority codified in title 38, but there has been a continuity of regulatory authority from 1928 to the present which authorizes retroactive correction of clear and unmistakable error. This regulatory authority has been held to be in accord with provisions for administrative finality. Legislative histories reveal Congress' awareness of the promulgation of regulations permitting correction of clear and unmistakable error. Indeed, Congress has itself incorporated the rule regarding retroactive correction of clear and unmistakable error into legislation authorizing benefits for widows and dependent children who without authority for correction of error would not be eligible. Under this provision, the surviving spouse of a veteran who would have been in receipt of total compensation for the required ten years but for clear and unmistakable error was made eligible for dependency and indemnity compensation notwithstanding the veteran's actual receipt of compensation for less than ten years. If revision of the effective date for total disability under authority for correction of clear and unmistakable error demonstrated the veteran's entitlement for a period of ten years or more, the bar against actually paying the retroactive benefits after the veteran's death did not operate to bar dependency and indemnity compensation otherwise payable on account of the veteran's having suffered total disability for the required ten-year period as provided in section 1318, title 38, United States Code.

Until recently, when the Court of Veterans' Appeals began to require VA and the Board to observe and apply this authority in all appropriate cases, the administrative power to correct clear and unmistakable error was not questioned. However, VA recently prevailed in a challenge of a Court of Veterans' Appeals decision on this issue. The United States Court of Appeals for the Federal Circuit reversed a Court of Veterans' Appeals decision which held that a veteran can challenge an otherwise final Board of Veterans' Appeals decision involving clear and unmistakable error.

This Federal Circuit decision forecloses the veteran from obtaining correction of a clearly and unmistakably erroneous decision if the clear and unmistakable error occurred or continued at the Board level. Therefore, express statutory authority for correction of clear and unmistakable error, whether at the Board level or below, now becomes a necessity if veterans who have been previously denied benefits to which they are undisputably entitled are to have a remedy.

Once a benefit has been granted, the veteran does not jeopardize what a VA Regional Office has granted by appealing to the Board for a greater benefit. The law has never been interpreted as giving the Board the authority to reduce

a veteran's disability rating or sever service connection, for example. To remove any possibility that proposed section 7111 is misinterpreted as permitting the Board to use its authority to take away benefits, the DAV suggests that the second sentence in subsection (a) of section 7111 be revised to read as follows: "If evidence establishes the error, and correction of the error will create a status, right, or entitlement denied on account of the error, the prior decision shall be reversed or revised."

This is one of the most important provisions before this body. The DAV urges its enactment.

Having expressed our support for this provision, I would like to note a concern of the DAV that the language of Section 408 excludes certain classes of veterans who have been illegally denied benefits to which they are otherwise entitled to receive. These include veterans who have filed claims for clear and unmistakable error at the regional office level, had their claims denied and failed to appeal this adverse determination; those veterans who have previously appealed the issue of clear and unmistakable error to the Board of Veterans' Appeals and had their appeals denied by the Board; and those veterans who had appeals for clear and unmistakable error dismissed without the Board reaching the merits of the claim error.

Mr. Chairman, as you may know, prior to the enactment of judicial review, VA and Board was able to maneuver through the law and regulations to obtain an outcome that was believed to be warranted, notwithstanding the fact that the law or regulations dictated a different (favorable) outcome. It was easy for VA and Board to sidestep the arguments of clear and unmistakable error made by claimants and representatives.

In its most simplistic form, DAV's position is that no veteran, who has been unjustly and illegally denied benefits or services to which he is otherwise entitled, should be denied his day in Court. The VA is not in business to deny claims—its sole purpose for existing is to dispense benefits and services to veterans entitled to receive them under the laws enacted by a grateful nation. Therefore, any veteran who can establish that VA committed clear and unmistakable error in denying his claim, should be provided the opportunity, at any time, to have that error corrected.

Accordingly, Mr. Chairman, we respectfully request that language be added to the provisions of Section 408 to allow any veteran whose claim had been unjustly and illegally denied in a previously finalized rating action or Board decision to bring a claim of clear and unmistakable error in that prior determination or decision.

The DAV supports section 501 of title V, which would clarify the intention of Congress regarding coverage of U.S. veterans who participated in nuclear testing of other nations and which would clarify that Congress did not intend to preclude service connection for radiation-related diseases not included in the Secretary's list of recognized radiogenic diseases.

Both of these amendments have been prompted because of prior administrative and judicial constructions which read the law in a very restrictive manner. Although, both of these negative interpretations have now been reversed, the codification of these provisions will serve to ensure proper application of the law in the future.

The DAV suggests, however, that presumptive service connection for radiation-related diseases should not be limited to veterans whose radiation exposure was in connection with atmospheric testing of a nuclear device or service in Japan following the bombing of Hiroshima and Nagasaki. Any line of duty exposure in which the amount of irradiation was comparable to or greater than that encountered in nuclear testing or service or interment in Japan should establish eligibility.

The DAV has no objection to extending the authority for a VA Regional Office in the Philippines, section 502, or corrections that would allow for counting income received during the year of renouncement of benefits where reapplication is made within one year of renouncement as would be provided by section 503.

The DAV fully supports section 504 which would provide a full month's benefit to a surviving spouse for month of death in the case of a veteran totally disabled by reason of service connected disabilities, if the surviving spouse is not eligible for dependency and indemnity compensation. This provision would lessen, for this most severely impacted group of surviving spouses, the hardship that occurs when a totally disabled veteran's income abruptly terminates due to his death.

Mr. Chairman, these several provisions in H.R. 4088 have a beneficial purpose, and the DAV appreciates this Committee's consideration of this Bill.

H.R. 4724

The DAV testified in the House in support of H.R. 4724. This Bill would enhance the loan guaranty program by expanding eligibility for VA guaranteed loans. Section 1(a) would provide for eligibility in the case of a reservist discharged because of a service-connected disability before completing the six years of service now required under section 3701, title 38, United States Code. Section 1(b) would provide eligibility for surviving spouses of reservists who die while on reserve duty. Section 6 would provide eligibility for veterans discharged or released from active duty as a result of a reduction in force before the completion of the 24 months continuous active duty that is otherwise required for veterans who enter service after September 7, 1980.

The DAV supports loan guaranty eligibility for these three classes of beneficiaries. The circumstances of the entitling service in these instances justify eligibility for loan guaranty. While it appears that the surviving spouses of reservists who die while on reserve duty or as a result of service-connected disability are already eligible for home loan guaranty under the plain language in subsections (2), (16), and (24) of section 101, title 38, United States Code, and while it is similarly arguable that reservists discharged because of service-connected disability are also eligible under section 3702(2)(B) of title 38, United States Code, the proposed amendments in section 1(a) and 1(b) of the Bill will add clarification and resolve any uncertainties.

Section 2 of the Bill would remove the requirement of certification of the water and sewerage systems. Section 4 would remove inspection requirements for manufactured homes and deem homes meeting Federal manufactured home construction and safety standards as meeting the Secretary's standards. Section 5 allows the holder of a VA guaranteed loan to correct an overbid. This technical amendment is procedural in nature and results in no cost to the

government or borrower. The DAV has no opposition to the amendments contained in these sections.

Section 3(a) of the Bill would provide authority to include loans for energy efficiency improvements with home refinancing loans. Section 3(b) would provide authority to refinance adjustable rate mortgages to fixed rate mortgages. These amendments will improve VA guaranteed loans by providing more options and flexibility for the veteran. The DAV supports the amendments contained in these sections.

The DAV believes these efforts to improve the VA home loan guaranty program are commendable, and H.R. 4724 has the DAV's support.

H.R. 4768

Mr. Chairman, we have reviewed H.R. 4768 and, while we have no position on any of the provisions of H.R. 4768, we are not opposed to its passage.

However, certain sections of this Bill are in our opinion worthy of additional mention.

Section 3 of the Bill would add facilities of "any federally recognized Indian tribe" to existing facilities of federal agencies or state and local governments receiving federal financial assistance. In order "to provide training or work experience as part or all of the veterans vocational rehabilitation program."

Mr. Chairman, this program was initially provided only at federal agencies. Subsequently, state and local government agencies were added and we believe the addition of federally recognized Indian tribes will be helpful in providing much needed work experience for eligible veterans, including Native Americans.

Section 9, would extend the Veterans' Advisory Committee on Education through December 31, 2003. We believe that based on the current down-sizing of the military there is a need to continually assess the ever changing needs of current and future veterans. The type of advice this Committee can give to the Secretary is very valuable.

Section 10 of this Bill would amend section 3697(b) of title 38 by increasing by $1 million the amount of monies available for contract educational and vocational counseling. We believe that the current backlog in counseling has created a considerable burden on existing staff. By increasing the amount of money available for contracting will help to alleviate this burden.

Section 11 of H.R. 4768 makes several changes to the Service Members Occupational Conversation and Training Act of 1992 (SMOCTA). We support these changes and believe they will go a long way toward providing meaningful employment assistance for many veterans as well as providing financial incentives to employers to hire these veterans.

H.R. 4776

Mr. Chairman, we support the provisions contained in H.R. 4776 and would like to offer the following comments including some suggestions for amendatory language.

Mr. Chairman, we support Section 2 of H.R. 4776, which would establish within the Department of Labor a Deputy Assistant Secretary for Veterans' Employment & Training. We believe this position is crucial to the Department of Labor's ability in carrying out the mandates contained in Chapters 41, 42, and 43 of title 38 U.S.C. Perhaps as important is the provision that would make this position a career reserved position rather than a political "Schedule C." Such a position would assure continuity of services and programmatic responsibility through political transitions. All too often, when there is a change in the Presidency, the Assistant Secretary's position is abolished and is one of the last to be filled by a new Administration. During that period a career Deputy would be able to carry on the duties and the functions and keep the Office of Veterans' Employment & Training Service running smoothly. If the position were to be political then, during transitions, you would have both positions vacant and no one leading the agency. We urge you to adopt this provision as contained in H.R. 4776.

We also support the provision that would set pay rates for DVOP specialists consistent with "rates comparable to those paid to other professionals." All too often, the various states have a wide salary gap between DVOP specialists and other professionals in the local employment security office. This tends to create an environment for high turnover so that DVOP specialists may improve their salary. If they were paid at comparable rates, the ability to obtain and retain quality candidates, would be significantly enhanced.

The Bill would also make several amendments to the special unemployment study currently required in Section 4110A(a), title 38, U.S.C. and would add to the classification of veterans a separate category "for women who are veterans."

We wholly supported that idea and suggest that in addition to including a category for women veterans a special category be included for veterans of minority status, including Hispanic.

Section 3 of the Bill would make several amendments to Section 4212, title 38, U.S.C. all of which we support. We would like to offer the following recommendations for inclusion into Section 3.

On Page 4 of the Bill, lines 7,8 and 9, add amendatory language for the Annual Report required of contractors to report "the number of such employees, by job category and hiring location, who are veterans described in Subsection (a)." We would suggest that that be expanded to include "and the number of applicants for both veterans and nonveteran." We would also suggest some changes to Section 4214, title 38, U.S.C. as follows:

Section 4214(a)(1) states in part, "It is, therefore, the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the federal government for disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement." Many federal agencies have viewed this mandate to be strictly one of providing veterans' preference in the hiring process and nothing beyond. Many agencies do not have an affirmative action plan as required in Section 4214(c).

We believe that in order to have a meaningful and effective affirmative action program for disabled veterans, there must be accountability built into the system. That accountability could take the form of sanctions against agencies

who fail to have a written plan available for review and managers should be held accountable for their performance under such a plan. While we understand "sanctions" may be difficult to assess on federal agencies, we believe individuals responsible either at the implementation level or policy level should be held accountable and failure for noncompliance should result in poor performance evaluations and other merit related penalties. Currently, managers are held accountable for other affirmative action programs under section 4303, title 5, U.S.C. which outlines penalties that may be assessed for "actions based on unacceptable performance." Similar actions should be delineated for individuals who do not meet stringent requirements under the affirmative action program for disabled veterans.

Any veteran who believes the agency does not have an acceptable and effective affirmative action program or if he or she believes they have been discriminated against because of their disabled veteran or veteran status may file a complaint with the Office of Personnel Management or other federal agency which shall promptly investigate such complaint. We believe without these needed changes affirmative action will continue to be virtually meaningless for disabled veterans.

S. 2387

S. 2387 would make changes very similar to those contained in H.R. 4768 as they relate to the SMOCTA of 1992, we support those suggested changes.

This concludes our statement, Mr. Chairman. I would be happy to respond to any questions you may have.

PREPARED STATEMENT OF DENNIS CULLINAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the Committee: On behalf of the 2.1 million men and women of the Veterans of Foreign Wars, I wish to thank you for inviting our participation in today's important hearing. The VFW remains committed to providing veterans with the very best care and services that they have earned through their service to the nation. Today's hearing addresses a variety of legislative initiatives directed toward enhancing or improving various aspects of the services provided to veterans by the Department of Veterans Affairs. The VFW is both pleased and honored to take part in this deliberative process.

First under discussion today is legislation addressing the Persian Gulf Syndrome. As this Committee is aware the VFW is deeply concerned and has been actively engaged in seeking the provision of appropriate health care and compensation for those Persian Gulf veterans who are suffering disabilities as a consequence of their military service in the Persian Gulf. The VFW is adamant that the Persian Gulf veteran not suffer the same neglect and denial as did Vietnam veterans suffering from Agent Orange and other herbicide related disabilities.

This Committee is of course also aware that the VFW has, and continues to, strongly support H.R. 4386. This legislation, introduced by the Chairman of House Veterans Affairs Committee, G. V. "Sonny" Montgomery, will provide

compensation to veterans suffering from illnesses attributable to service in the Persian Gulf theater of operation. This bill would also provide for increased research of any illnesses reported by Persian Gulf veterans as well as other purposes. The VFW deems this legislative initiative to be a strong and appropriate response to problems confronting Persian Gulf veterans and, of equal importance in these strained budgetary times, constructed so that it stands a good chance of being enacted into law.

In our testimony on this legislation before the House Veterans Affairs Committee in June of this year, the VFW clearly articulated its preference that there be no delimiting date on this legislation's authority for the Secretary to provide compensation for a period not to exceed three years to Persian Gulf War veterans for illnesses that cannot now be diagnosed. Even so, we note that without such a stricture, the cost estimate associated with this initiative could well be so high that it would effectively prohibit its being enacted into law and/or prove to be excessively detrimental to other VA programs under the "Pay-as-you-go" provision of the budget accord. Further, H.R. 4386 dictates that the compensation it authorizes will continue for an additional three years upon the Secretary's providing to the Committees of Veterans Affairs of the Senate and House reports stating that as of the date of the report no diagnoses for the illnesses suffered by Persian Gulf veterans can be made based on current medical knowledge. In the event that diagnoses are rendered, then Persian Gulf veterans would be awarded compensation based on established evidential practices. Thus this legislation is designed so that it may first be enacted into law and then continue to pay appropriate compensation to Persian Gulf veterans suffering from undiagnosed disabilities.

Under discussion today is S. 2178, legislation to provide a program of compensation and health research for illnesses arising from service in the Armed Forces during the Persian Gulf War, introduced by Senator Daschle along with Senator Akaka. This legislation, which is similar to H.R. 4386 and identical to Persian Gulf legislation introduced in the House by Congressman Evans, H.R. 4540, is to be commended for its spirit and thrust. We support in principle that this legislation provides no termination or sunset date for its authority. We note, however, that as previously stated this very fact may very well preclude its enactment into law or place an undue burden on other VA programs if enacted due to the consequent high cost estimate under the Pay-as-you-go provision of the budget accord. We would also mention at this juncture that a concomitant benefit associated with the extendible three year delimiting period is that it will keep the scientific and medical community more keenly focussed on the issue. Awarding open ended compensation for undiagnosed disabilities could all too easily become a rote bureaucratic exercise with appropriate medical and scientific attention slipping away.

Additionally, the VFW notes that S. 2178 provides for the award of compensation within three years of separation from military service whereas H.R. 4386 provides for the awarding of such compensation for undiagnosed disabilities which become manifest to a degree of 10 percent or more before the later of October 1, 1996 or the end of the two year period beginning on the last date on which the veteran performed active military service in the Southwest Asia theater of operations while on active duty. That S. 2178 would, for example, award VA compensation to a Persian Gulf veteran who has made a career of military service for an undiagnosed disability which supposedly manifests some 32 years after service in the Persian Gulf is both excessively

liberal and unwise. Given the nebulous nature of the Persian Gulf Syndrome, the VFW supports establishing the precedent of awarding VA compensation to veterans suffering from undiagnosed and unidentifiable disabilities. But to enact legislation which asserts that a undiagnosed disability could somehow lie dormant for over 30 years and then suddenly become manifest to a compensable degree is unsound and a virtual assault on the integrity and standards of the VA compensation system.

The VFW would now address another piece of Persian Gulf legislation, S. 2330, introduced by Chairman Rockefeller along with Senator Murkowski and numerous other members from the Senate Veterans Affairs Committee. Once again the VFW very much appreciates the spirit and intent of this legislative initiative, but we take exception with its key premise that the Secretary of Veterans Affairs already has the authority under law to compensate Gulf veterans for their undiagnosed disabilities. While VA does possess the authority to award VA compensation on a presumptive basis, presumptive disabilities do in fact have recognized medical diagnoses. The question of presumption comes to bear with respect to whether or not a given disability is incidental to military service.

The Persian Gulf Syndrome is altogether another matter. Its symptoms are often vague and difficult to define, and explicitly have no known diagnosis. This is why the VFW does not believe that the Secretary has the authority to award compensation for the Persian Gulf Syndrome.

Further, the Secretary of Veterans Affairs and VA General Counsel have emphatically stated that VA does not have the statutory authority to compensate an undiagnosed illness. Given the Secretary's sterling performance thus far in providing veterans with all benefit of the doubt in his administration of VA, we are inclined to believe that if he did have such authority he would certainly utilize such.

It is also our assessment that this legislation holds the potential to virtually overwhelm and destroy the VA compensation system. 5. 2325 amends the definition of a compensable VA disease to essentially consist of "any deviation or interruption of normal body functioning manifested by symptom (or symptoms) with known or unknown etiology." The key phrase is "symptoms." For the purposes of service~connection, a disease which eludes diagnosis can be granted service connection if the veteran exhibits "characteristic symptoms," i.e., a set of known symptoms. The Gulf Syndrome in undiagnosed cases usually does not exhibit "characteristic symptoms." This creates the need for legislation to remedy this problem. Of the 2,000 claims adjudicated based upon environmental exposure, only 350 have been granted service connection under current law. The Secretary correctly notes that the language of the Rockefeller legislation would create a situation where every veteran that exhibits a "symptom" could potentially receive service connection. Essentially, if a veteran complains of, say, lower-back pain and no clinical evidence of disease, injury or etiology is established, service connection could still be granted because the veteran exhibits a "symptom." Thus, the current VA compensation system could well be inundated to the point of collapse.

Mr. Chairman, given time constraints, the VFW will provide its comments on the other legislation under discussion today in follow-up written testimony. Once again, I wish to thank you and the members of this committee for

including the VFW in today's important deliberations. This concludes my statement. I would be happy to respond to any questions you may have.

PREPARED STATEMENT OF TERRY GRANDISON, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. Chairman and members of the Committee, on behalf of Paralyzed Veterans of America (PVA), I wish to thank you for this opportunity to present testimony today. PVA will address the following legislative proposals: S. 2305, a bill to establish the "Veterans Law Judge Act of 1994"; S. 2178, a bill to establish the "Persian Gulf War Veterans' Compensation Act of 1994"; S. 2330, a bill to provide that undiagnosed illnesses constitute diseases for entitlement to disability compensation; S. 2325, a bill to reauthorize programs relating to substance abuse and homeless assistance for veterans; S. 2094, a bill providing permanent authority to approve basic educational assistance for flight training; S. 2322, a bill to increase the cost that the Department of Veterans Affairs (VA) may incur to pay for a contract burial of a nonservice-connected disabled veteran who dies in a VA facility; S. 2320, a bill to establish the "Philippine Veterans Currency Act of 1994"; S. 2324, a bill to provide title 38 employees protection against prohibited personnel practices;

S. 2321, a bill to make eligible for burial in national cemeteries the spouses of veterans who predecease the veterans; S. 2323, a bill to clarify the coverage and protection provided to medical quality assurance records; S. 2331, a bill to extend or make permanent certain authorities and requirements under title 38; S.2365, a bill to provide for a study of the health consequences of family members of atomic veterans exposed to ionizing radiation;

S. 2387, a bill to amend the Service Members Occupational Conversion and Training Act of 1992; H.R. 4724, a bill to amend title 38, United States Code, relating to veterans' housing programs, and for other purposes; H.R. 4776, a bill to establish the "Veterans' Employment Act of 1994"; H.R. 4768, a bill to establish the "Veterans' Education and Training Act of 1994"; and H.R. 4088 (as reported by the House of Representatives and passed in S.1927), a bill to establish the "Veterans' Benefits Act of 1994."

S. 2305—Veterans Law Judge Act of 1994

This bill would amend section 7101(b) of title 38 to provide that members of the Board of Veterans' Appeals be referred to as veterans law judges. This bill would provide that members of the Board of Veterans' Appeals (other than the Chairman and Vice Chairman) shall receive compensation under the provisions of section 5372 of title 5 and other benefits equal to those payable to an administrative law judge. In addition, S. 2305 would permit the Chairman of the Board of Veterans' Appeals to continue to serve after the expiration of the Chairman's term until his or her successor is appointed.

The title of this proposed legislation strikes at the very heart of the VA adjudication system. Benefit determinations within VA were initially intended to be informal and without the strict rules of evidence required by judicial bodies. This tradition of a nonadversarial and informal system has continued over the years. The creation of the United States Court of Veterans Appeals was not intended to change that informal system of adjudication. It is

distressing to see the Board of Veterans' Appeals evolving into a body seeking the accoutrements of a law court when those appearing before it are not knowledgeable in the complexities of the law. For example, the Board seeks to create the position of "Bailiff," an archaic position in the federal courts which was abandoned years ago. Now its members seek to adopt the title judge and will no doubt demand the robes of the judiciary next. PVA is more than willing to accord the members of the Board of Veterans' Appeals pay in keeping with the complexity of their work. Complexity of duties does not, however, equate with judicial status.

PVA does not believe that any change should be made in the present term of the Chairman of the Board of Veterans' Appeals. Rather, PVA supports a procedure at the expiration of the Chairman's term whereby the Vice Chairman of the Board becomes Acting Chairman until a new Chairman is named and confirmed.

PVA opposes S. 2305 in its entirety even though there is no objection to the manner in which Board members are to be paid or reappointed. The attempts to foist a formal legal procedure on

veterans and their dependents where none was ever intended pervades the bill.

S. 2178—Persian Gulf War Veterans' Compensation Act of 1994

This bill would require VA to provide compensation to Persian Gulf War veterans who have disabilities resulting from an illness or illnesses that cannot be diagnosed or defined, and for which causes cannot be identified until such time as scientific evidence demonstrates that the illnesses are unrelated to military service during the Persian Gulf War. This bill would require VA to develop case assessment protocols and case definitions for such illnesses and establish an outreach program to Persian Gulf War veterans and their families. This proposal would also authorize further research activities.

PVA supports the provisions of S. 2178 which provide for further medical research to resolve the problems of diagnosing the multiple symptoms plaguing some of our veterans who served during the Persian Gulf War. Vigorous research is necessary to develop better modalities of care for ill Persian Gulf War veterans, and would permit appropriate compensation for their illnesses. PVA believes that if medical research supports a causal link or association between service in the Persian Gulf and a disease or syndrome then those conditions should be subject to a conclusive presumption of service connection. Service connection should not be granted for vague symptoms alone. The studies proposed will hopefully provide the answers to diagnose the various illnesses of some Persian Gulf War veterans. At that time, compensation may be paid in accordance with the severity of the disease as dictated by VA's Schedule for Rating Disabilities. For these reasons, PVA concludes that action on sections which would grant service connection for undiagnosed conditions be deferred.

S. 2330—Undiagnosed Illnesses Constitute Diseases For Entitlement To Disability Compensation

This bill would provide that undiagnosed illnesses constitute diseases for purposes of entitlement to disability compensation for service-connected diseases. Again PVA questions the propriety of granting service connection for vague symptoms alone. Our rationale expressed with respect to S. 2178 applies to this bill as well. However, if action on S. 2178 and S.2330 is not deferred, PVA must express our concern about the funding of disability compensation for Persian Gulf War Veterans suffering from undiagnosed illnesses (S. 2178 and S. 2330). PVA strongly opposes using funds from existing veterans programs and benefits, in this case dependency and indemnity compensation, to compensate Persian Gulf War Veterans. PVA urges the Congress to authorize and appropriate additional funds to compensate these veterans.

S. 2325—Substance Abuse and Homeless Assistance For Veterans

This bill would reauthorize programs relating to substance abuse and homeless assistance for veterans, and authorizes a demonstration program to provide assistance to homeless veterans.

PVA is concerned about the pervasiveness of substance abuse, mental illness, and homelessness among veterans. This proposal recognizes that these conditions feed off each other and programs established to serve veterans must be coordinated with that basic premise in mind. For example, it is estimated that one-third to one-half of the nation's homeless are veterans. The number of homeless veterans could be as high as 250,000, and two-thirds of that number are likely to be drug or alcohol addicted. The sheer magnitude of these figures indicates thousands of veterans are in need of assistance and are suffering from multiple problems. PVA has long supported alternative modes of care such as halfway-houses, therapeutic communities, and psychiatric residential treatment centers. PVA recognizes the value of offering different modes of treatment-so that care can be tailored to an individual's special needs and circumstances to enhance the healing and recovery process. For these reasons, PVA supports this legislation.

S.2094—Basic Educational Assistance For Flight Training

This proposal would make permanent the authority of the Secretary of Veterans Affairs to approve basic educational assistance for flight training. PVA has no objection to this bill.

S. 2322—Contract Burial Of Nonservice-Connected Veterans

S. 2322 would increase the cost that VA may incur to pay for a contract burial of a nonservice-connected disabled veteran who dies in a Department of Veterans Affairs facility. This bill would increase the cost to an amount not to exceed $600. The current law authorizes VA to pay the actual cost, not to exceed $300, to bury a nonservice-connected veteran who dies in a VA facility. PVA does not object to this bill.

S.2320—The Philippine Veterans Currency Act of 1994

This bill would eliminate the requirement that veterans of the Philippine Commonwealth Army and the dependents and survivors of such veterans be paid certain benefits in Philippine pesos. PVA has no objection to the elimination of the currency restriction on payment of veterans' benefit checks.

S. 2324—Protection From Prohibited Personnel Practices

This proposal would provide title 38, United States Code, employees (VA medical professionals such as physicians, dentists and nurses) appointed under that title protection from prohibited personnel practices, including protection against reprisal for "whistle-blowing," that apply to other federal employees. This bill would also authorize the Merit Systems Protection Board and the Office of Special Counsel to review any VA personnel actions based on Title 5.

PVA has strongly urged repeal of the Title 38 exemption from the Whistle-blower Protection Act to protect employees, who report incidents of agency wrong-doing, from retaliation. As a matter of fundamental fairness, VA employees must be entitled to the same protection that other federal employees enjoy. PVA strongly supports this legislation.

S. 2321—Eligibility For Burial In National Cemeteries of Spouses Who Predecease Veterans

This measure would make eligible for burial in national cemeteries the spouse of a veteran who predeceases the veteran. PVA has no objection to this bill.

S.2323—Medical Quality Assurance Records

This bill would clarify the coverage and protection provided to medical quality assurance records by section 5705 of Title 38. PVA recommends that assurances be included in this bill that would prevent this legislation from denying veterans, their representatives and attorneys from obtaining access to medical records. Access to medical records are paramount when bringing claims for veterans' benefits, and claims of medical malpractice against VA under the Federal Torts Claims Act. Furthermore, access to records is necessary for independent on-site evaluations, such as those conducted by PVA's Veterans Benefits Department, which assesses spinal cord injury units. PVA supports this bill provided the assurances of veterans' access to medical records are guaranteed explicitly.

S. 2331—Amendments To Title 38, United States Code

This bill would make permanent the authority for waiver of reduction of retirement pay for registered-nurse positions. This bill would make permanent the requirement for review of special pay agreements for physicians and dentists. This proposal would also extend the authority of VA to enter into enhanced-use leases to December 31, 1996. PVA has no objection to this proposal.

S. 2387—Service Members Occupational Conversion and Training Act of 1992

This proposal would amend Section 4485(d) of the Service Members Occupational Conversion and Training Act of 1992 by permitting a period of training more than 18 months. PVA has no objection to this proposal.

S. 2365—Study Of Health Consequences For Family Members Of Atomic Veterans Exposed To Ionizing Radiation

This bill would provide for a study of the health consequences for family members of atomic veterans exposed to ionizing radiation. The proposal would also require the Secretary of Veterans Affairs, in consultation with the Secretary of Defense and the Secretary of Health and Human Services, to enter into an agreement with the Medical Follow-up Agency of the Institute of Medicine of the National Academy of Sciences to carry out the study. PVA supports this measure.

H.R. 4724—Amendments To Title 38, United States Code, Relating to Veterans Housing Programs

This measure would provide home loan guaranty eligibility for reservists discharged because of a service-connected disability. The bill would also repeal the requirement for a statement from a local official regarding water and sewage systems. H.R. 4724 would grant authority to guarantee home refinancing loans for energy efficiency improvements. This bill would also grant authority to refinance adjustable rate mortgages to fixed rate mortgages. This measure would deem any manufactured housing unit conforming with the standards pursuant to the National Manufacturing Housing Construction and Safety Standards Act of 1974 certified for the purpose of granting a loan.

PVA supports the granting of home loan eligibility to reservists with service-connected disabilities. PVA believes veterans with service-connected disabilities should be entitled to benefits appropriate to the level of their disability regardless of their service. PVA opposes the repeal of Section 3704(e) of title 38, United States Code. Section 3704(e) requires a statement from a local official regarding water and sewage systems. PVA recognizes that some Federal, State, and local laws now adequately cover the subject of individual water and sewage disposal systems as an alternative to public and community systems. Nevertheless, PVA believes that the certificates are still necessary because many homes utilize septic tank systems. In fact, some rural homes do not have water from established water systems. PVA supports the remainder of H.R. 4724, with the above exceptions.

H.R. 4776—Veterans' Employment Act of 1994

This bill would amend Section 4102A(a) of title 38, United States Code, by creating the position of "Deputy Assistant Secretary of Labor for Veterans' Employment and Training" within the Department of Labor. This bill authorizes the Deputy Assistant Secretary to perform such functions as the Assistant Secretary of Labor for Veterans' Employment and Training prescribes. This measures would require that the Deputy Assistant Secretary be a veteran, and the position be a career reserve position. PVA has no objections to this bill.

H.R. 4768—Veterans' Education and Training Act of 1994

This legislation would make changes in veterans' educational programs. This bill would expand the definition of "educational institution" to include entities that provide the necessary training for completion of any State-approved alternative teacher certification program for the period ending on September 30, 1996. The bill would also permit eligible veterans to enroll in courses offered by educational institutions located outside the United States, if the institution of higher learning and course are approved by the Secretary of Department of Veterans Affairs. PVA has no objections to these provisions and the remaining sections of H.R. 4768.

H.R. 4088—Veterans' Benefits Act of 1994

H.R. 4088, as reported by the House of Representatives and passed in S.1927, contains five titles addressing the following areas: title I would provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities, and the rates of dependency and indemnity compensation for survivors of such veterans; title II would codify presumptions of disability for specific health problems due to herbicide exposure in Vietnam previously established by the administration; title III addresses the board of veterans' appeals administration; title IV would require improvements in the VA adjudication process; and title V contains miscellaneous provisions.

PVA supports title I of H.R. 4088, which provides for an equitable increase, effective December 1, 1994, in compensation cost-of-living adjustment (COLA) paid to veterans with service-connected disabilities and survivors receiving Dependency and Indemnity Compensation (DIC). PVA notes that the estimated annualized rate of inflation, based upon the Consumer Price Index (CPI), is currently 3.3 percent. Last year the figure was 2.7 percent. H.R. 4088 would provide a 3 percent COLA. We further note that the COLA contained in the companion bill (S. 1927) is targeted to Social Security. If Social Security recipients receive an increase larger than 3 percent, we too, for the sake of equity, would hope to have our rate increased.

PVA remains opposed to permanently indexing veterans' compensation COLAs. We believe in Congress' historic authority to annually determine what is an equitable COLA. This permits Congress to consider all factors in determining the necessary increase to maintain veterans' compensation at current levels. The CPI may or may not accurately reflect all the economic and social actions and interactions that affect veterans. At the very least the CPI may not be accurate as it relates to the catastrophically disabled individual, and his or her special needs.

PVA supports title II of H.R. 4088. This title would codify actions previously taken by the Secretary of Veterans Affairs. PVA's consistent concern is that these determinations be based upon valid medical studies, and that there be a correlation shown between the malady and the "herbicide agents." Once this correlation is shown, VA should move rapidly to compensate all veterans so afflicted.

PVA supports Section 5109A (Revision of decisions on grounds of clear and unmistakable error) of title IV. PVA believes this section will make it easier

for veterans to challenge a BVA decision which is the product of clear and unmistakable error.

PVA also supports Section 7111 (Revision of decisions on grounds of clear and unmistakable error), but with reservations. This section states that a BVA decision may be revised or reversed if evidence establishes the error (clear and unmistakable). It continues to state that if such an error is found the revision or reversal has the same effect "as if the decision had been made on the date of the prior decision." In addition, this proposed legislation gives the BVA authority to correct *any* error on its own motion. On its face this legislation appears harmless, but could have detrimental consequences if the prior decision was favorable to the claimant. The language appears to give the BVA the power to take benefits away from people, and they may be able to do so without providing the claimant an opportunity to have any say in the matter before the revision is made. In order to avoid such an unconscionable scenario, PVA urges Congress to limit BVA's authority to determine whether clear and unmistakable error exists only when it is prejudicial to the claimant. PVA supports the remaining provisions of title IV and title V.

Mr. Chairman. That concludes my testimony. I will be happy to answer any questions that you, or members of this Committee, might have.

PREPARED STATEMENT OF PAUL E. SKOGLUND, EXECUTIVE DIRECTOR, VIETNAM VETERANS OF AMERICA

Introduction

Mr. Chairman and members of the Committee, Vietnam Veterans of America (VVA) appreciates the opportunity to present its views on legislation before the Committee today. The six bills in which Vietnam veterans have a significant stake are S. 2305 on the Board of Veterans Appeals, H.R. 4776 on veterans employment, the two bills—S. 2330 and S. 2178—on compensation for Persian Gulf Veterans with undiagnosed disabilities, S. 2325 on homeless assistance and substance abuse for veterans, and S. 2387 on SMOCTA, the Service Members Occupational Conversion and Training Act.

S. 2305

During the past year and a half, the veterans service organizations (VSOs) have worked closely with the House and Senate Committees on Veterans Affairs and the Department of Veterans Affairs (VA) to make a number of desperately needed changes in the veterans adjudication system that will bring a greater measure of justice to veterans claims and that will allow the Board of Veterans Appeals (BVA) to process a staggering backlog of appeals of denied claims.

Among the steps in need of upgrading is the position of member of the Board of Veterans Appeals. Although the work is similar to that of an Administrative Law Judge (ALJ), neither the pay nor the job security is comparable. The predictable result is that the system has lost—and continues to lose—a significant number of experienced Board members to ALJ positions in other agencies. The veterans claims adjudication process suffers from this decline in the number of experienced Board members. VVA believes that

S. 2305 will provide relief, and will strengthen the BVA's ability to process claims in a just and timely manner.

It is also clear that action needs to be taken to establish job security for Board members. S. 2305 sets clear standards of job performance—an important facet of any discussion of job security. Section (4)(c)(3)(A) wisely requires the Secretary to prescribe criteria that will build considerations of timeliness, case management, substantive errors, and conduct as a Board member into any evaluation of job performance.

One point that concerns VVA, however, is the bar in Section (4)(c)(3)(B) against any consideration of granting or denying appeals. We understand the motive and applaud it—to keep members free of pressure to either deny or grant appeals. However, we would be concerned if a member's rulings showed a personal bias in either direction. Subsection (B) might need rewording to allow such a bias to be taken into account.

This caveat notwithstanding, VVA supports S. 2305. It is one of a number of measures aimed at resolving the logjam at BVA. We see the need for quick enactment.

H.R. 4776

Vietnam Veterans of America also supports H.R. 4776, the "Veterans' Employment Act of 1994." While we have some reservations about making the Deputy Assistant Secretary for Veterans' Employment and Training a career reserved position rather than a political one, we recognize the problems in recent administrations that prompted this change. Amending the language authorizing compensation rates for Disabled Veterans Outreach Specialists (DVOPs) to acknowledge their professional status more clearly is useful. VVA strongly approves amending existing wording of Section 4212 of title 38 USC which will require federal contracts to include veterans who have served in campaigns and expeditions for which a campaign badge has been authorized.

S. 2330

Clearly, we are within reach of an agreement on how to compensate veterans suffering from illnesses attributed to service in the Persian Gulf Theater. These veterans and their families are experiencing debilitating health effects—both physical and emotional—with far-reaching financial implications. Currently about 4,000 Gulf War veterans have been rated or are being rated for disability stemming from a constellation of symptoms associated with their service in this brief war. This compares to the 10,000 being compensated for predictable disorders. This "mysterious syndrome" accounts for the crippling disabilities of a major portion of veterans. These symptoms compel an urgency for immediate care and compensation, and a vigorous research initiative to determine their cause and best treatment.

Vietnam Veterans of America has a longstanding pledge that never again shall another generation of veterans be forgotten. What we have seen in the government's response to the "Desert Storm Syndrome" is a pattern of evasion and reluctance paralleling our own experience with Agent Orange. While the Persian Gulf malady is far different and strikes with alarming speed, the government's response is all too familiar.

Two bills present themselves today as vehicles for making it possible for VA to compensate Gulf War veterans for symptoms that remain undiagnosed. We wish to thank you, Mr. Chairman, and the other members of this Committee for your diligence in searching for solutions, because the need is great. VA insists that it lacks authority in the absence of a clear-cut diagnosis, and has asked for legislation that would permit action. We commend the Secretary for asking, having seen earlier leadership at VA fight against calls to act. Although Members of this Committee contend that VA has unquestionable authority to compensate veterans in this case, we welcome the effort to affirm and clarify such authority.

Mr. Chairman, VVA finds much in this bill that is compelling. Defining the terms "disease" and "disability" should make it easier for VA to see its responsibility to look at the needs of the veteran in cases where the ailment is not clearly understood. The section requiring that consideration be given to "places, types, and circumstances of such veteran's service" and to "common or shared experiences, medical symptoms or signs, or both, of other veterans" will make it possible for VA to take action at a much earlier stage in future cases than it did with either the Gulf War syndrome or Agent Orange during the Vietnam War. This authority will also make it easier for VA to take action to assist veterans when their problems first appear.

We consider S. 2330 a useful bill but an incomplete one. Its minor flaw is that it allows VA to compensate for undiagnosed disabilities only if they occur with a single year of leaving service. Most cases of Gulf War-related disabilities manifested later, and this bill would offer those veterans no remedy. Secretary Brown has asked for authority for a two-year period, and VVA supports his request.

The major problem we see in S. 2330 is that it relies upon the contention that VA has always had the authority to act in such cases. VA has a long history of unwillingness to use its authority. It did not use that authority during the first decade in which it was clear that Agent Orange was highly correlated with a variety of clearly diagnosed illnesses in Vietnam veterans. VA has not used this inherent authority for atomic veterans or for Gulf War veterans. Our experience is that authority to decide to compensate is not enough.

S. 2178

Vietnam Veterans of America supports S. 2178. The bill is specific to the needs of afflicted Gulf veterans. Its Congressional findings are sharply accurate. It gives VA deadlines for developing case assessment protocols and case definitions. It specifies that VA outreach efforts shall include a newsletter and a hotline, and it requires that an epidemiological study be done.

We also support the aggressive, specific outreach program detailed in S. 2178. Too little has been done to make Gulf War veterans aware of services available to them, such as the Persian Gulf War Veterans Health Registry, or to keep them up to date on scientific findings. Requiring VA to set up an 800 number within a specified time period, and delineating certain kinds of information it must supply, are essential steps required by the bill. VVA assumes that "establishment of a toll-free telephone number" as mandated in the bill includes publicizing its existence, providing adequate equipment and personnel to make it functionally efficient, and that one of VA's duties is to

take information from callers for the Persian Gulf War Veterans Health Registry. Even so, it might be useful to add such language.

The most important section of S. 2178 is that detailing compensation. The time period of three years for disabilities to manifest strikes the balance between prudence and allowing for the unknown. Testimony before this Committee has made it clear that a period of one-to-three years is appropriate. VVA urges that Congress remain vigilant in case a longer period is needed for a reasonable assessment of service connection.

A strong argument can be made for combining S. 2178 and S. 2330 in a formula that would retain the Gulf War-related specifics of S. 2178 and put forward the clarifications of authority and definition found in S. 2330. Such a bill would parallel the legislation adopted by the House Committee on Veterans Affairs, which is similar to S. 2178, and add to it the important clarifications of S. 2330.

Most important, because the resulting Senate bill would have strong similarities to the House measure, enactment this year of a bill to compensate afflicted Gulf War veterans would be all but assured. Absent such a compromise, the possibility would exist of a stalemate either within the Senate or between the Senate and the House that would forestall enactment of legislation to aid these young veterans whose suffering is attenuated by government's inability to find solutions.

S. 2325

Vietnam Veterans of America is pleased to see the provisions of S. 2325, and we wish to commend your work, Mr. Chairman, in the broad-ranging and little-understood realm of mental health, particularly with regard to veterans. The connection between substance abuse and homelessness is a strong one, so much so in veterans with Post Traumatic Stress Disorder (PTSD) that seasoned practitioners see substance abuse as a symptom of PTSD. As VVA testified before this Committee last February, untreated PTSD is a major cause of homelessness in veterans, and it is a direct result of combat. The nightmares are savage, the flashbacks are terrifying. Most veterans with PTSD find that substance abuse—alcohol, drugs or both—will dull their unbearable symptoms, so they "self-medicate." But substance abuse is no cure.

Holding a job while suffering both a serious mental health problem and a major addiction is an unimaginable challenge. Relinquishing the substances that kill those war memories brings on an even greater struggle to live a normal life. Most of these veterans live alone, afraid to trust anybody. They have tried jobs and failed, tried going straight, tried PTSD programs and been thrown out for drunkenness, tried substance abuse treatment only to have the war return every night.

Vietnam Veterans of America has long been a proponent of the idea that partnerships between VA and community-based organizations (CBOs) are essential to any success in breaking the cycle of homelessness that continues to dishearten our communities and plague the men and women who served this nation. The partnership of VA's expertise in treatment programs and case management with CBO housing and employment opportunities has proven to be the best approach to successful reintegration of homeless veterans back into the community and a meaningful quality of life.

The proposals of S. 2325 are another major step in the long range rehabilitation so badly needed to address this problem. Where these partnerships exist, there is evidence that veterans with chronic mental illness and/or substance abuse problems have spent less time in the hospital once they have the adequate housing and the support services they need to exist in man's natural habitat—the community.

"Project Partnership," which includes VVA's own charitable organization the Vietnam Veterans Assistance Fund, the West Haven VAMC and the State of Connecticut, is one example. VVAF was one of three recipients of a $500,000 Capital Development Grant from Start Connecticut to buy homes for homeless veterans in the West Haven, Connecticut area. The strength of the proposal was partnership of VA's services and VVAF's management of the properties. Along the way several state and local agencies have contributed to the success of the venture. "Project Partnership" is one of many CBOs that tailor their programs to meet the distinctive needs of homeless veterans. The success record of dozens of veteran-run CBOs makes a very strong argument for earmarking homeless grant monies for veteran-specific programs.

We believe a formal relationship between VA and CBOs is a built-in quality assurance that protects veterans from slum lords and outrageous rental charges. We also know that community living offers more opportunities for veterans than permanent domiciliary living or nursing homes which promise only dead ends or warehousing. We applaud the requirement that each VAMC Medical Director be required to assess the needs of the local veteran homeless. We hope this assessment will be more than a "body count" or the filling of squares. VVA suggests that it also be a requirement that these Directors develop a plan of action for addressing those needs.

It is important to add that this action plan needs to be a two-way street, a dialog between state and local governments and VA on how to maximize the available resources and channel them to provide the best services to the homeless. This includes other Federal Agencies such as the Department of Housing and Urban Development (HUD). Senator Campbell's amendment to HUD legislation, which would require more interaction between veterans providers and local boards, is an important step to local interactions which develop rich relationships between providers that pay off for veterans and the communities that participate.

The years of experience that VVA's state councils and chapters have had with local projects for homeless veterans have led us to advocate a continuum of care. Paying rent, receiving job training and finding employment opportunities provide meaning which improves homeless people's self-esteem as they work their way back into the world. Vietnam Veterans of America heartily endorses the proposals in this legislation. Thank you, Mr. Chairman, for advancing these much-needed, decisive measures.

We ask this Committee's support for S. 2325. A third of the adult homeless on America's streets are veterans, yet barely a tenth of homeless funding is aimed at reaching them. Because the connection between military service and homelessness in veterans is so little understood, programs are designed to help "generic" homeless people, which is to say non-veteran homeless people. That is a frustrating waste of money and energy. The programs extended by this bill are programs that *do* help homeless veterans, and they deserve your support.

Homelessness is not a problem that can be resolved in the short term. It is time to stop fighting it on a hand-to-mouth basis.

S. 2387

A month ago notices were being readied for trainees in Service Members Occupational Conversion and Training Act (SMOCTA) courses telling them that the program was dead, its spending authority lapsed and not extended into FY 1995. Thanks to the vigilance of Chairman Rockefeller and Senators DeConcini and Thurmond of this Committee, as well as to an outpouring of "Save SMOCTA" messages to members of the Senate, that issue is now pending before the Defense Appropriations Conference Committee and this hearing today is considering a measure for improving SMOCTA rather than burying it. Keeping this veterans employment program alive has been the work of many hands, and VVA is grateful for the help this program has received.

Congress designed SMOCTA as a tool to assist the reintegration of transitioning service members into the civilian job market. Under SMOCTA veterans with combat skills that are hard to market outside the armed forces can receive training in civilian jobs from employers.

"Under this program," said General Preston W. Taylor, DOL's Assistant Secretary for Veterans' Employment and Training, "$75 million was allocated to help employers improve and expand their businesses with high caliber, highly trainable new employees—our veterans." This program can pay employers $10,000 for a veteran who served after August 2, 1990 and who meets one of the following three criteria:

- has a primary or secondary military occupational specialty (MOS) that is not readily transferable to the civilian work force;
- has been unemployed for 8 of the last 15 weeks;
- is entitled to compensation (or would be entitled to compensation but for the receipt of military retirement pay) for a service-connected disability rated at 30 per cent or more. Veterans with a 30 per cent or more service-connected disability may be eligible for up to $12,000.

SMOCTA offers a helping hand to recently separated veterans, and also to the employer. To date, $33 million of the allocated funding remains uncommitted as the fiscal year draws to a close. SMOCTA got off to a late start, and many veterans attempted too late to get into courses that had ended. Likewise, the small businesses that are the fastest growing sector of the economy are just beginning to hear of SMOCTA, now that Assistant Secretary Taylor is selling them on it aggressively.

Vietnam Veterans of America supports S. 2387. What S. 2387 offers is a repeal of the current statutory limitation of more than 18 months of training for veterans whose training begins on or after the enactment date of the act. It is important to note that the total amount of individual payment may not be increased by extending the training.

The reason for lifting the cap on the number of training days without paying for more training is to gain flexibility. The current limit has barred trainees from some apprenticeship programs that run longer than the limit. That does not help anybody. The formula offered by S. 2387 allows veterans to avail

themselves of apprenticeship programs without additional cost. We fail to see how anyone could turn that down.

Mr. Chairman, this concludes our testimony.

STATEMENT OF PHIL BOYER, PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSOCIATION

Mr. Chairman, my name is Phil Boyer, and I am the President of the Aircraft Owners and Pilots Association. We are pleased to offer our strong support for S.R.2094, a bill to make permanent the Veterans' Flight Training program. I would like to particularly commend Senator Tom Daschle for his tireless efforts to permanently extend this most valuable program.

AOPA represents the interests of 330,000 individual members who own and fly general aviation aircraft to fulfill their personal and business transportation needs. That is 60% of the active pilots in the United States. AOPA members own or lease 62% of the aircraft in the general aviation fleet.

Mr. Chairman, this legislation provides a permanent avenue for veterans to pursue a career in aviation. As you are aware, this most important veterans' benefit program is essential to help ensure an adequate supply of qualified commercial pilots for the future of our national air transportation system. Those who have answered our nation's call to service certainly deserve help with training in this field.

Individuals who receive benefits under the flight training program are serious about a career in aviation. To participate in the program, a veteran must possess a valid private pilot's license and must satisfy the medical requirements to obtain a commercial license. In addition, the veteran must attend a flight school which has been approved by the FAA and the state agency which certifies all veterans' educational programs. The training must be generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation.

The Veterans' Flight Training program has important national implications as well. Statistics compiled by the Office of Technology Assessment and the Future Aviation Professionals of America show that our nation is in the brink of a critical pilot shortage -- not just the airlines, but also in other important areas of aviation, such as air ambulance, crop dusting, and corporate pilots. Veterans deserve a chance at these jobs, and this bill will help make this possible.

The cost of flight training is substantial, and many veterans will be unable to pursue careers in aviation unless their educational benefits can be used for this purpose. Thanks to the Committee's previous efforts, qualified veterans have been able to pursue a career in aviation. A majority of the 2,500 veterans trained through the program in the last four years now have aviation jobs.

Mr. Chairman, the Veterans' Flight Training program has been most successful in developing well-trained pilots. This permanent extension is an outstanding example of a government program that truly benefits our nation's veterans. I thank you for allowing me the opportunity to share our thoughts with you.

STATEMENT OF RICHARD B. FRANK, PRESIDENT, BOARD OF VETERANS' APPEALS PROFESSIONAL ASSOCIATION, INC.

Mr. Chairman and members of the Committee, on behalf of the Board of Veterans' Appeals Professional Association, I wish to thank the Committee for this opportunity to appear.

Mr. Chairman, on July 1 the President signed into law S. 1904 conferring for the first time in sixty-one years single member decisional authority on members of the Board of Veterans' Appeals. We believe that this step is not only appropriate but essential to assist us in meeting the timeliness crisis in the appellate process. We are also convinced that single member decisional authority will only improve timeliness, without sacrificing the quality of our service to our veterans, if we have experienced Board Members who can function efficiently as independent decision makers. We, therefore, strongly support both measures before the committee today that are designed to assure the retention of qualified and experienced Board Members, S. 2305 and H.R. 4088. As between the these two proposals, our preference would be S. 2305.

Both the Administration and all of the Veterans Service Organizations that participate in the Independent Budget have recognized that retention of Board Members is now a critical issue in the appellate system . The reasons for this are clear. As of July 1993, there were 55 attorney members of the Board. Since that date, nine of our number have departed to become Administrative Law Judges (ALJ's). Eight of these individuals were veterans and they possessed a combined total of 150 years of experience at the Board. Thirty-six of the remaining 46 Board Members, or 78 percent, have indicated they have applied or intend to apply to become ALJ's. Of this 36, no fewer than 20 have already completed and submitted the arduous written application, and eleven are currently on the register maintained by the Office of Personnel Management (OPM). If Board Members apply to become ALJ's, they will be placed on the register maintained by OPM and they will be offered positions. Between 1980 and 1990, nine Board Members applied to become ALJ's. Of the Board Members who did not severely restrict their geographical availability, all were offered and accepted ALJ positions. During this period, Board Members enjoyed pay comparability with ALJ's, and the Social Security Administration was forming new classes of ALJ's on a fairly regular basis. Between the Federal Employees Pay Comparability Act of 1990 (Pay Act) and last summer, the OPM register for ALJ's was effectively closed and extremely few new ALJ's were hired. Six Board Members had applied to get on the register prior to its closure and the effective hiring freeze. Every one of them was placed on the register. In July 1993, the Social Security Administration formed its first class of 21 new ALJ's from the current list. Out of a pool of over 400 names, two of the six Board Members on the list were selected. These two Board Members between them had over 40 years of experience at the Board; both were veterans; one was rated as 70 percent disabled due to combat incurred wounds. Between January and June 1994, 136 more ALJ's were hired. Seven of them were Board Members, six of whom were veterans with a combined total of over 110 years of experience at the Board.

With respect to future hiring of ALJ's by the Social Security Administration (SSA), we have been informed by our former colleagues who are currently ALJ's that SSA will form a class of 54 new ALJ's in October, and will have

authority to hire at least 150 more ALJ's during Fiscal Year 1995. If Board Members are hired only in proportion to their current rate of success, we will experience the loss of at least another ten Board Members during Fiscal Year 1995 alone.

The departure of experienced Board Members will cause irreparable damage to the appellate decision process and severely aggravate the timeliness crisis. Without a high level of experience among Board Members, literally thousands of claimants will not receive every benefit due. Without a high level of experience among Board Members, every appellant bringing a claim to the Board will be directly affected because inexperienced Board Members will not be able to operate with the high productivity required to maintain timeliness. We believe that the loss of large numbers of experienced Board Members will more than offset any productivity gains through automation, single member decisional authority or administrative reforms. At least a quarter of the veteran population is 65 or over. Thus, where claims for veterans' benefits are involved, the phrase "justice delayed is justice denied" has a special sting, for the grim reality is that ever more protracted delays in the appeal process mean that many claimants will literally die before they receive answers to their appeals.

"The Veterans Law Judge Act of 1994," S. 2305, addresses effectively the two basic reasons why Board Members are preparing to leave to become ALJ's: what we deem an ill-considered legacy of the Veterans Judicial Review Act of 1988 (VJRA) that placed Board Members on terms of appointment without any basic rights and the Pay Act of 1990, that severed the decades-old status and compensation equity between Board Members and ALJ's. I will address each of these in turn.

Terms of Appointment

Under the VJRA, members of the Board for the first time were placed on terms of appointment. As a result of this legislation, Board Members are now the only Federal workers under the General Schedule who have had their civil service career positions converted to terms of appointment. The VJRA established a standard nine-year term and provides that a member may be reappointed; however, the enabling legislation mandated that the initial set of 66 appointments would be divided into three groups with inaugural terms of, respectively, three, six and nine years. The initial set of appointments was made effective in July 1991. Thus, after allowing for attrition from retirements and resignations, approximately one-third of the Board would reach the ends of their inaugural terms in July 1994, July 1997 and July 2000, respectively.

The VJRA dictates that members of the Board will be appointed by the Secretary with approval of the President, based upon recommendations of the Chairman. 38 U.S.C. Section 7101(b)(2). The language of the VJRA does not provide:

- ANY standard or criteria for appointment or reappointment;
- ANY opportunity for hearing or presentation to the Chairman or Secretary by a member seeking reappointment; or
- ANY requirement that a member be provided notice that he or she will not be reappointed.

Moreover, as Chairman Cragin noted in his testimony before the Subcommittee on Compensation, Pension and Insurance of the United States House of Representatives on April 28 of this year, if for any reason there is simply administrative delay in processing a reappointment, an individual would not only lose his or her status as a Board Member at the end of a term, but that individual would also cease to be an employee of the Department.

The imposition of terms of appointment on these previously career appointments has profoundly negative ramifications for appellants, as well as the Board. For 60 years, the reality and perception have been that members of the Board have decided cases by applying the law to the facts found, regardless of any other considerations. The creation of what is effectively a term at whim opens the adjudication process to politicization and manipulation. While any single Administration may find satisfaction in the belief in, or the reality of, its ability to tug the substantive outcome of appeals in any direction, once this process starts it will be hard, if not impossible, to check. Tides that rise, also fall. When individual merits no longer control the outcome of appeals, we will have a lottery, not an adjudication process, and veterans and their dependents will lose both justice and faith.

Terms of appointment, per se, will not preclude the recruitment of individuals to become members of the Board, but they already have drained, and will continue to drain, the pool of candidates of precisely those individuals best qualified to serve. Stated plainly, no one without recent extensive experience in adjudicating claims for veterans' benefits can function with competence *and* with the requisite degree of dispatch as a member of the Board. The law governing veterans' benefits has always been complex and arcane. The advent of judicial review has had an exponential impact on the recondite nature of the field. Board Members have been recruited almost entirely from within because we believe that no written test, set of paper credentials or interview skills will guarantee the high level of performance we demand to keep the appellate system operating with our immense case load. We believe it takes from seven to ten years for an individual to master the legal and medical knowledge central to the veterans' benefit program. Then, only those who have competitively demonstrated their ability by actual performance on the job are selected for membership on the Board.

The organization of the Board around a small cadre of very highly skilled, subject matter experts has been demonstrably cost effective. It is a system, however, dependent upon stability and the ability of the Board to retain high quality counsel to train and ultimately promote. The prospect now is that a counsel will work very hard for seven to ten or more years before qualifying for an appointment. That appointment, however, is no longer a career position, but a term with no guarantee that merely doing the job well will secure reappointment. For typical Board Counsel, this appointment process raises an ominous prospect: in the seventeenth to twentieth year of a career in the Federal government, at a time when there may well be a family to consider, he or she will be cast out without notice. This scenario has already exacted its toll. There are now at least six counsel, most of them senior counsel, who were acknowledged by Board Members as likely candidates for Board membership who have left the Board for other Federal agencies. In each case, a major, if not the sole reason for their departure has been the term issue.

S. 2305 fully meets the basic concerns of Board Members. It does not alter the fact that Board Members will continue to serve under terms of appointment. It does provide very basic rights of notice and hearing for Board Members the Secretary decides not to reappoint and requires the Secretary to set standards for reappointment. It also provides for continuation of service of a Board member whose term has expired until he or she is reappointed or a replacement is appointed, provided that the Chairman so recommends and the Secretary approves. Simply stated, Board Members have no objection to being evaluated in a fair process under fair standards, even though no other ALJ's or administrative judges to our knowledge are subjected to such scrutiny.

Status and Pay Comparability

The second major reason why Board Members are preparing to depart in large numbers to become ALJ's is because they had their responsibilities and the complexity of their work substantially increased by the VJRA, and then they lost the equality of status and pay with ALJ's that they had enjoyed as a result of the Pay Act. For a great many years, Board Members, as GS-15's, were compensated equally with the very great majority of ALJ's, including all of the over 800 who adjudicated claims for Social Security Benefits. The Pay Act dramatically changed this situation by placing ALJ's on a separate compensation scale. Speaking in simple terms, the Pay Act altered the compensation of ALJ's to such an extent that they will be receiving nearly $20,000 per year more than a member of the Board. This differential will only increase with cost of living adjustments, not to mention the equally dramatic differences in retirement and insurance benefits. We must emphasize that the Pay Act in no way changed the duties or responsibilities of ALJ's; it only changed the compensation deemed worthy for that work.

We believe that pay comparability between Board Members and ALJ's is a matter of equal pay for equal work and simply involves a restoration and reaffirmation of the equality between the adjudication of claims for veterans' benefits and claims for other government benefits usually earned under far less arduous circumstances. In this same vein, the change of job title from "members of the Board of Veterans' Appeals" to "veterans law judges" is also a step that reaffirms the equality of the appeal process for veterans' benefits and claims for other government benefits. We believe the failure to restore the equality of status and compensation carries with it the message that veterans and their dependents should be satisfied with second class adjudication.

STATEMENT OF THE HONORABLE TOM LEWIS, REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I appreciate having the opportunity to testify before the Committee on behalf of hundreds of thousands of veterans' families across the U.S. who are subject to a practice I find most unfair.

As you know, for disability compensation and pension, when a veteran passes away, his spouse will be paid his final compensation check through the end of the last month he lived. This seemingly simple rule has created a very frustrating situation for spouses of deceased veterans.

Last year, the 73-year-old widow of a veteran contacted my office. Her story prompted the drafting of my bill, H.R. 1986. On March 31st, her husband died at three o'clock in the afternoon. The next day, April 1, she received his disability compensation for the month of March, which she used to pay many of his final month's medical expenses. Then, on April 21, VA sent her a form letter telling her to return the money she had received. The VA revoked her husband's entire compensation for the month of March, all $1,212.

In an effort to pursue the most cost effective way to remedy this situation, with the help of the Congressional Budget Office I came up with a solution. The VA would pro-rate the final payment, providing compensation earned for each day the veteran is alive in that final month. For example, if he lives until the 15th, at least his spouse will get his compensation for the 1st through the 15th, rather than nothing at all.

Mr. Chairman, in my opinion, this is the fairest way for Congress to pay the debt we owe our veterans' families. I find it appalling that the spouse of one of our nation's veterans would be penalized by the VA. During her time of grief, she is forced to return her husband's monthly compensation, the money she spent on his living expenses.

With the unanimous consent of the House Veterans' Affairs Committee, a compromise was reached. In Section 504 of H.R. 4088 (S. 1927) a provision similar to my original legislation is included.

The spouse of a veteran who is totally disabled, but whose death is not service connected would receive his entire month's benefit. In doing so we are taking the first step towards helping the most financially burdened, the spouse of a totally disabled veteran.

The Congressional Budget Office estimated the cost of this provision at $2 million, a very small sacrifice for the spouse of a veteran who might be without income for a month because her husband died a few hours too soon.

From the beginning, this legislation has enjoyed the support of nearly all veterans service organizations, as well as my colleagues in the House, Mr. Montgomery, Mr. Stump, Mr. Slattery, and Mr. Bilirakis.

Mr. Chairman, as the committee reviews legislation affecting veterans' benefit programs, I urge you to seriously consider how grateful veterans will be, knowing their spouse will receive fair treatment in the difficult months following their death. I will continue to work with the committee in whatever way necessary to ensure the intent of this bill is preserved and justice is done. We owe this much to our nation's veterans.

STATEMENT OF GERSHON M. RATNER, GENERAL COUNSEL, DIRECTOR OF LITIGATION, NATIONAL VETERANS LEGAL SERVICES PROJECT

September 16, 1994

Margaret Morrow, Esq.
Office of Senator Jay Rockefeller
Senate Veterans' Affairs Committee
414 Russell Senate Office Building
Washington, DC 20510

Dear Meg,

Enclosed please find a formal statement for inclusion in the record of the September 14, 1994 hearing on H.R. 4088. Pursuant to our discussion, the statement focuses principally on the House version itself, with suggested additions limited to guaranteeing its coverage for all classes of "clear and unmistakable error" (CUE) claims within its rationale.

More broadly, however, the Court of Veterans Appeals (CVA) has recently rendered several rulings on CUE which have severely, and needlessly restricted its availability as a remedy for obviously erroneous VA benefits denials. Specifically, I would like to describe briefly two such cases: *Fugo v. Brown*, 6 Vet. App. 40 (1993) and *Caffrey v. Brown*, 6 Vet.App. 377 (1994).

In *Fugo*, CVA made two rulings which should be overridden. First, the Court held that, regardless of how obviously erroneous a BVA finding of fact may have been, such errors of "improperly weigh[ing] the evidence can never rise to the stringent definition of CUE." 6 Vet. App. 40 at 44. This flies in the face of the fact that the only criterion for CUE under 38 C.F.R. §3.105(a) is whether it is "clear and unmistakable." That is, whether an error is CUE turns on the obviousness of the error, not the nature of the error—whether it is an error of law, fact or misapplication of law to fact. Congress should clarify that CUE applies to all of these three categories of error.

Second, BVA enacted a much stricter pleading burden for CUE claims than is justifiable under the "well grounded claim" standard of 38 U.S.C. §5107(a). Under CVA case law, to present a well grounded claim, all that is necessary is that the claim be "plausible." *Murphy v. Derwinski*, 1 Vet. App. 78, 81 (1990). As applied to CUE, all that a veteran need allege to avoid dismissal of his claim without adjudicating its merits is a "plausible" basis for the conclusion that the challenged error was "clear and unmistakable." By contrast, in *Fugo*, CVA insisted that veterans must allege "persuasive reasons . . . as to why the result would have been *manifestly* different but for the alleged error." (emphasis in original). *Id.* at 44. This heightened pleading requirement may be impossible for virtually any veteran to meet and may result in dismissal of many CUE claims. It is unauthorized by statute or regulation and should be overridden.

Finally, in *Caffrey*, the Court ruled that CUE claims can never be based on a breach of the duty to assist, because the evidence on which CUE rests must have been not only in existence at the time of the challenged decision, but before the decisionmaker. This means, for example, that even a flagrant VA breach of its duty to assist by failing to acquire evidence favorable to a veteran

from his private doctor, which would have resulted in his claim being granted, as in Mr. Caffrey's case itself, can never be CUE.

If you would like more information, please contact Bart Stichman, because I will be out of the office on vacation until September 26th.

Sincerely yours, *Gershon M. Ratner.*

STATEMENT

National Veterans Legal Services Project (NVLSP) is very pleased that the Committee has given it the opportunity to submit testimony on H.R. 4088. We would like to focus on section 408, which involves veterans claims that VA denials of benefits involved "clear and unmistakable error" (CUE). Within that section, we would like to address both why the existing House provisions are important, and why certain further provisions should be added to ensure that veterans may have all of their CUE claims against Board of Veterans' Appeals (BVA) decisions adjudicated on the merits.

At the outset, we want to emphasize the critical role that CUE plays within the VA adjudicatory process. Typically, if a veteran's benefits claim is finally denied by the VA Regional Office (or other agency of original jurisdiction (AOJ)), and not timely appealed to the Board of Veterans' Appeals, absent CUE, a veteran would have no further recourse available by which to seek to gain the benefits retroactively to the date of his original claim. While a veteran could reopen his claim with "new and material evidence," even if successful, that would only entitle him to benefits retroactive to the date he filed his reopened claim. Similarly, if a veteran timely appealed an AOJ denial to the BVA, and the BVA finally denied his claim, absent CUE, his only potential recourse for gaining benefits retroactive to the date of his original claim would be judicial review.

CUE is essential because, in that relatively small percentage of cases in which veterans can show that the VA's benefits denial was clearly and unmistakably erroneous, CUE entitles the veteran to have the otherwise final agency denials set aside and the benefits restored retroactive to the date of the original claim. The longer ago the egregious VA denial of benefits occurred, the more important it is that veterans be able to receive the benefits to which they have been continuously entitled retroactive to the date of the original claim, because the more money they will have been illegally deprived of, and the more they will have suffered, in the interim.

Turning to the current language of Section 408, subsection (a) would codify VA's existing CUE regulation, 38 C.F.R. §3.105(a), by guaranteeing veterans' right to challenge unappealed AOJ decisions on the grounds of CUE. This would be valuable to ensure that VA does not attempt to repeal, or further narrow the scope of, that already narrow regulation.

Subsection (b) would guarantee veterans the same right to challenge BVA decisions for CUE as they would have to challenge AOJ decisions for CUE under subsection (a). Subsection (b) has been made imperative because of the recent decision of the U.S. Court of Appeals for the Federal Circuit in *William A. Smith v. Brown*, No. 93-7043 (Aug. 12, 1994). In *Smith*, the court held that the existing CUE rule, §3.105(a), does not authorize veterans to challenge otherwise final BVA decisions as CUE, but only to so attack AOJ decisions.

A recent analysis NVLSP conducted of a random sample of U.S. Court of Veterans Appeals (CVA) decisions reported in Westlaw revealed that approximately 10% of all CVA decisions involved claims of CUE, and in approximately half of those, or 5% of all CVA cases, the CUE claims were against the BVA, not the AOJ. Extrapolating the 5% figure to the approximately 1 million VA disability benefits claims filed per year would suggest that there may be as many as 50,000 CUE claims per year filed against BVA decisions. Unless *Smith* is superseded by language similar to that in Section 408, subsection (b), even where the BVA has made gross and inexcusable errors, it would be impossible for veterans to challenge them as CUE and thus recover benefits retroactive to the date of their original claims.

To avoid the anomaly that subordinate agencies of original jurisdiction would be able to reverse BVA decisions if CUE claims against BVA were, like other claims, first adjudicated by the AOJ's, subsection (b) provides that CUE claims against BVA would bypass the AOJ's ("the Secretary") and be decided instead directly by the Board. The subsection provides that CUE claims could "be made at any time after [the challenged BVA] decision is made" to guarantee that there is no statute of limitations on CUE claims on the merits.

Perhaps most importantly, under subsection (b), it would be mandatory for the BVA to decide CUE claims against it "on the merits". This is in direct contrast to the way BVA has been treating such CUE claims until now, i.e., as motions for reconsideration under 38 U.S.C. §7103(c). The reconsideration procedure is unacceptable because it permits BVA to nullify CUE claims against it simply by exercising its discretion to refuse to decide the claims.

Subsection (c)(1) would guarantee that CUE may be used to correct obviously erroneous denials regardless of how long ago the adverse AOJ or BVA decision was rendered, as well as if they occurred "on or after the date of . . . enactment." Allowing CUE to challenge adverse decisions without time limit is consistent with VA's existing policy under §3.105(a).

Subsection (c)(2) recognizes that, under the new procedure established by subsection (b) for bypassing AOJ adjudication of CUE claims against BVA decisions, there would never be AOJ decisions on these claims with which notices of disagreement (NOD's) could be filed. See 38 C.F.R. §19.118 (1991) (NOD's may be filed only with AOJ decisions.) Accordingly, it would be impossible to satisfy CVA jurisdiction to review BVA denials of these claims under section 402 of the Veterans Judicial Review Act, because that is predicated on there having been an NOD on the claim filed on or after November 18, 1988.

By eliminating the NOD requirement for CVA jurisdiction over CUE claims against BVA decisions, (c)(2) reconciles CVA jurisdiction with the AOJ bypass provision in subsection (b). By extending the NOD waiver to all CUE claims against BVA decisions pending before VA or the courts on the date of enactment, as well as to those claims filed thereafter, (c)(2) creates CVA jurisdiction over BVA denial of many claims for which there will be either no NOD on the CUE claim at all, or none filed after November 18, 1988.

Two additions should be made to the bill to ensure that all CUE claims to which section 408's rationale applies are entitled to its protection. First, language needs to be added to subsection (c) to specify that Section 408 applies to all claims pending before VA or the courts on the date of enactment, or filed

thereafter. This is necessary to ensure that VA itself is obligated to apply the requirements of Section 408 to all CUE claims (especially including those against BVA decisions) which are pending on, or will be filed after, the date of enactment.

By contrast, the current language in subsection (c)(2) only applies to certain claims pending on or filed after the date of enactment for the purpose of eliminating the NOD requirement for CVA jurisdiction; language in subsection (c)(2) never states that VA itself must apply Section 408 to all such claims, regardless of whether the claims are appealed to CVA. Thus, such a provision is especially important to compel the Secretary to transmit to the BVA, and the BVA to decide on the merits, all CUE claims against BVA decisions which are currently pending before the AOJ's, the BVA, or in transmission from the former to the latter.

Second, the scope of section 408 should be expanded to guarantee that veterans may reinstate all claims of CUE against BVA decisions which will have been dismissed by VA or the courts *prior* to the date of enactment without having adjudicated the merits of the CUE claims. Such an expansion is necessary because, under *Russell/Collins v. Principi,* 3 Vet.App. 310, 315 (1992), once a final decision has been entered by the AOJ, BVA, CVA (or the Federal Circuit) denying a CUE claim, "that particular claim of `clear and unmistakable error' may not be raised again. . . . It is *res judicata.*"

Our understanding is that for years BVA has been uniformly rendering final decisions, in effect, denying claims of CUE against BVA decisions, on the ground that CUE lay only against AOJ, but not BVA, decisions. BVA has then typically considered whether, in its discretion, to grant reconsideration of its prior decisions under 38 U.S.C. §7103(c), and usually decided not to do so. This effectively denied the CUE claims without ever adjudicating their merits.

Now, however, that section 408 confers the statutory right to file CUE claims against BVA decisions regardless of when they were made, fairness and justice demand that veterans be given the opportunity to challenge as CUE the same BVA benefits denials which had previously been dismissed without having adjudicated the merits of the CUE claims. This could be done in at least two different ways: either by allowing veterans to file new CUE claims on the original grounds starting back with the BVA pursuant to section 408(b)(1), or by mandating that the original final decisions of the BVA, or final judgments of the courts, dismissing the CUE claims without deciding their merits be vacated.

Creating a new statutory cause of action to challenge as CUE the same underlying BVA decision for which the CUE claim was previously dismissed would completely avoid any potential separation of powers problem that might inhere in Congress' mandating that final federal court judgments be vacated. See *Pope v. United States*, 323 U.S. 1, 65 (1944). At the same time, the Supreme Court has recently stated that Congress has very broad powers to enact retroactive civil legislation. It has noted that the "constitutional impediments to retroactive civil legislation are now modest," *Landgraf v. USI Film Products*, ____ U.S. ____, 62 LW 4255, 4263 (April 26, 1994), and that "[a]bsent a violation of [a specific constitutional prohibition], the potential unfairness of retroactive civil legislation is not a sufficient reason for a court to fail to give a statute its intended effect." *Id.* 62 LW at 4262.

Indeed, the Court clearly implied that legislation requiring vacation of prior final judgments would be constitutionally permissible as long as Congress made it unambiguously clear that that was what it intended to do. *See id.*, 62 LW at 4261 with 4258 n.8 (Section 15(b)(3)). And, in any case, separation of powers concerns applicable to the judiciary might not preclude Congress from ordering that executive branch, i.e. AOJ or BVA, decisions be vacated. Whichever way it is done, it is important that the legislation expressly guarantee veterans the right to have their previously finally denied CUE claims against BVA decisions decided on the merits.

UNIFORM CASE ASSESSMENT PROTOCOL

DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

IL 10-94-010

In Reply Refer To: 116

June 17, 1994

UNDER SECRETARY FOR HEALTH INFORMATION LETTER

MEDICAL CARE PROGRAMS FOR PERSIAN GULF VETERANS,INCLUDING COMPREHENSIVE CLINICAL EXAMINATION PROTOCOL

1. Many of the almost 700,000 personnel who served in the Persian Gulf have reported health problems since their return to the United States. While most of the health problems of these veterans have been diagnosed as conditions that are readily definable, some veterans have presented with unexplained illnesses after their Persian Gulf Service. Many of the Gulf War veterans seen by Department of Veterans Affairs (VA) clinicians have complex, multifaceted health problems that provide difficult diagnostic challenges. Veterans are understandably frustrated that definitive answers regarding the cause(s) of their problems are not immedicately forthcoming. To provide the best medical care possible, in the most caring and compassionate manner, requires a special sensitivity to the concerns of the Gulf War veterans, and their families, and a thorough knowledge of VA programs available to them.

2. All VA health care facilities must examine the available services for Persian Gulf veterans to ensure that quality outreach, diagnostic, and treatment services are being furnished as intended.

3. At the National Institutes of Health (NIH) Workshop on Persian Gulf Experience and Health and recent congressional hearings, veterans and veterans organizations expressed their perception that many VA employees lacked compassion, serious concern, and in-depth knowledge of the problems suffered by those who served in the Persian Gulf. Some have complained about being denied timely access to the priority care that is required by law (Pub. L. 103-210). Others stated that administrative and clinical staff are not adequately informed about Persian Gulf Programs, including the Persian Gulf Registry and Referral Centers.

4. To reach and serve these veterans, steps should be taken to ensure that:

a. Your staff are conducting appropriate outreach activities within the facility and in the community.

b. All Persian Gulf veterans who contact your facility are informed about the availability of the Registry and are advised as to how to apply for a Registry and submit a claim for compensation in a supportive and encouraging manner.

c. Persian Gulf veterans receive both the Registry examination and the priority medical treatment for which they are eligible in a timely way.

d. Your medical staff are offered continuing medical education which addresses the health problems experienced by Persian Gulf veterans.

IL 10-94-010
June 17, 1994

e. Your non-medical staff members who interact with veterans (e.g., Medical Administration Service (MAS) personnel, clinic clerks, telephone operators, and others) receive training regarding the full range of programs available to Persian Gulf veterans and how to access them in your facility.

f. You have put in place appropriate mechanisms to monitor the effectiveness and potential shortcomings in services provided to Persian Gulf veterans. Management must be kept apprised of these issues and appropriate corrective actions should be taken promptly should opportunities for improvement arise.

5. So that your staff will have the most up-to-date information necessary to provide effective services, the Office of Environmental Medicine and Public Health will be sending all Environmental Physicians a copy of the draft report of the recent NIH workshop. NIH is in the process of developing slide presentation materials which can be used for outreach activities and staff education. Copies of these materials will be made available to you shortly. An interactive satellite video conference will be held on July 21, 1994, to update the field on various Persian Gulf issues and activities, including the NIH workshop. Your staff will have the opportunity to obtain Continuing Medical Education (CME) credits and ask questions of the conference participants.

6. In recent weeks VA and Department of Defense (DOD) have been working cooperatively to develop a uniform case assessment protocol for evaluation of Persian Gulf veterans with unexplained illnesses. The first step toward diagnosis of health problems of a Persian Gulf veteran will continue to be the Registry examination. For those veterans whose health problems are complex and require further evaluation, the full range of consultative and diagnostic services at your facility should be made available to them. If a diagnosis is not readily apparent after routine medical evaluations we would recommend that the Comprehensive Clinical Evaluation Protocol be followed. This protocol was developed for use in VA's Referral Centers and has been adapted for use by both VA and DOD. A copy of this protocol is provided for you in Attachment A and should be made available to the medical staff at your facility. A copy is to be provided to the Environmental Physician and the ACOS/AC.

7. I know I can count on you to make our efforts on behalf of the Gulf War veterans as effective and successful as humanly possible. I sincerely appreciate all of your hard work and compassion in carrying out this critically important part of our mission.

John T. Farrar

John T. Farrar, M.D.
Acting Under Secretary for Health

Attachments

Distribution: CO: E-mailed 6/17/94
FLD: RD, MA, DO, OC, OCRO and 200 - FAX 6/17/94
EX: Boxes 104, 88, 63, 60, 54, 52, 47 and 44 - FAX 6/17/94

ATTACHMENT A

IL 10-94-010
June 17, 1994

DEPARTMENT OF VETERANS AFFAIRS
COMPREHENSIVE CLINICAL EVALUATION PROTOCOL

Individuals who, after completing Registry evaluations do not have a clearly defined diagnosis which explains their symptoms should receive the following supplemental baseline laboratory tests and consultations.

Supplemental Baseline Laboratory Tests and Consultations

CBC
CD4/CD8 Ratio

Sedimentation Rate (ESR)
C-Reactive Protein
Rheumatoid Factor
ANA
Serum Protein Electrophoresis
Serum Immunoglobulins
Liver Function Tests
CPK

Stool for Ova and Parasites
Urinalysis
TB Skin Test (PPD) with controls
Chest X-Ray

Hepatitis Serology
HIV testing (only with patient's written informed consent)
Serology for:
- Brucellosis
- Q Fever
- Lyme Titer

VDRL
B12 & Folate
Thyroid Function Tests

Consultations

Neurology: Screening Evaluation
EEG

Infectious Disease: Screening Evaluation

Dental: Screening Evaluation

Psychiatry:

Physician Administered Instruments
Structured Clinical Interview for DSMIII-R (SCID)
(delete modules for mania and psychosis)
Clinician Administered PTSD Scale (CAPS)

Self Administered Instruments
Combat Exposure Scale
Mississippi Scale
Traumatic Stress Scale
Impact Event Scale
MOS -Sleep
MOS-Sex
MOS-Social Support
Beck Depression Index
Social Network

Psychology: Neuropsychological Testing

ATTACHMENT B

IL 10-94-010
June 17, 1994

COMPREHENSIVE CLINICAL EVALUATION PROTOCOL
SYMPTOM SPECIFIC EXAMINATIONS

Individuals who have the following symptoms should have the following minimum workup offered to the veteran.

Diarrhea
GI consult
Stool for O&P
Stool Leukocytes
Stool Culture
Stool Volume
Colonoscopy with biopsies
EGD with biopsies and aspiration

Abdominal Pain
GI consult
EGD w/ biopsy/aspiration
Colonoscopy with biopsy
Abdominal ultrasound
UGI series with small bowel FT
Abdominal CT Scan

Headache
MRI - head
LP: glucose
protein
cell count
VDRL
oligoclonal-myelin basic protein
pressure

Muscle Aches/Numbness
EMG/NCV

Joint Pain

Rheumatology consultation

Chronic Fatigue
Polysomnography & MSLT
Leishmaniasis serology (IFA sent to CDC)
Virus: IgG, EBNA, VCA

Memory Loss
MRI - head

Lumbar Puncture

Vertigo/Tinnitus
Audiogram
ENG
BAER

Chronic Cough/SOB
Pulmonary consult
Pulmonary Function Tests with Exercise & ABG
Methacholine Challenge if PFTs are normal
Consider Bronchoscopy with biopsy/lavage

Chest Pain/Palpitations
ECG
Exercise Stress Test
Holter Monitor

Skin Rash
Dermatology consult
Consider biopsy

Viscerotropic Leishmaniasis should be considered in Persian Gulf veterans who exhibit the following findings:

Adenopathy
Hepatomegaly
Splenomegaly
Leukopenia
Elevated Transaminases

These may be transient or persistent and may occur singly or in combination. Symptoms of viscerotropic leishmaniasis may be non-specific and mimic those commonly seen in Persian Gulf veterans with unexplained illnesses.

A serologic test, which is both sensitive and specific, is not clinically available at the present time. Both IgG titers and serum immunoflourescent antibody titers (IFA) can be negative in patients with culture-positive viscerotropic leishmaniasis. Bone marrow aspiration, lymph node aspiration or biopsy, and liver biopsies for leishmaniasis culture remain the diagnostic procedure of choice. (Magill AJ, et al. NEMJ 1993:328:1383-1387)

O

ISBN 0-16-046268-1